ARNOLD SCHWARZENEGGER, GOVERNOR

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California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict–of–interest codes, will review the proposed/amended conflict–of–interest codes of the following:

CONFLICT–OF–INTEREST CODES

AMENDMENT

MULTI–COUNTY: School Project for Utility Rate Reduction

A written comment period has been established commencing on **November 30, 2007**, and closing on **January 14, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45–day comment period, the proposed conflict–of–interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above–referenced conflict–of–interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re–submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict–of–interest code(s). Any written comments must be received no later than **January 14, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re–submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict–of–interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict–of–interest code(s) should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322–5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict–of–interest codes may be obtained from the Commission offices or the re-

spective agency. Requests for copies from the Commission should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322–5660.

TITLE 4. CALIFORNIA GAMBLING CONTROL COMMISSION

NOTICE OF PROPOSED RULEMAKING

Licensing Regulations (Withdrawals, Denials)

The California Gambling Control Commission ("Commission") proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to revise section 12002 and adopt sections 12047, 12048, 12050, and 12348 of Title 4 of the California Code of Regulations, concerning licensing issues.

NO PUBLIC HEARING SCHEDULED AT THIS TIME

At this time, the Commission has not scheduled a public hearing. Any interested person or his or her duly authorized representative may request a hearing pursuant to Government Code section 11346.8 no later than 15 days prior to the close of the comment period.

WRITTEN COMMENT PERIOD

November 30, 2007 to January 17, 2008

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45–day public comment period. To be considered for summary and response, **all written comments must be received no later than 5:00 p.m., January 17, 2008**.

Requests for a public hearing or written comments for the Commission's consideration should be directed to:

Heather Hoganson, Counsel, California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833–4231;
Fax: 916–263–0452, E–mail: hhoganson@cgcc.ca.gov

AUTHORITY AND REFERENCE

Authority for the proposed regulations is provided by various provisions of the Gambling Control Act, which may be found in Business and Professions Code sections 19800–19980. In particular, Business and Professions Code sections 19804, 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19861, 19864, 19870, 19872, 19880, 19890, and 19982 provide specific authority.

The proposed regulation implements, interprets, or makes specific Business and Professions Code sections 19823, 19850, 19851, 19852, 19857, 19858, 19859, 19860, 19862, 19863, 19867, 19868, 19870, 19883, 19892, 19952, and 19960, and Government Code 7, which are included as reference citations in the proposed regulations.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Gambling Control Act (Business and Professions Code, section 19800 et seq.) provides the Commission jurisdiction over controlled gambling and all activity that is related to the conduct of controlled gambling. This includes licensing individuals and entities for work permits, registrations, findings of suitability, and state gambling licenses.

The proposed regulations provide clarity on such licensing issues as withdrawal or abandonment of applications, denial procedures and due process rights following a denial, and mandatory and discretionary grounds for denial for a state gambling license or key employee license.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: These regulations do not impose a mandate on local agencies or school districts.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None

Other non–discretionary cost or savings imposed upon local agencies: None

Cost or savings in federal funding to the state: None

Cost impact on representative private person or business: For someone being able to withdraw an application, there may be a cost savings in recovering background deposits. Following a denial, if someone wanted to pursue an appeal, the exercise of due process rights might involve costs, but no additional costs are contemplated in this regulation — the regulatory text clarifies existing rights to appeal a denial, should one occur.

Impact on Business: The Commission has made an initial determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: The Commission has made an initial determination that the proposed regulatory action would not affect housing costs.

Effect on small business: Some cardrooms may be small businesses; the cost effect on these cardrooms are the same as that addressed under "private person or business."

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

ASSESSMENT REGARDING CREATION OR ELIMINATION OF JOBS IN CALIFORNIA

The Commission has made an assessment and determined that the adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

Heather Hoganson, Counsel, California Gambling Control Commission,
2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833–4231;
Telephone: 916–263–0490, Fax: 916–263–0452, E–mail: hhoganson@cgcc.ca.gov.

Requests for a copy of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other technical information upon which the rulemaking is based should be directed to:

Gina Luna, California Gambling Control Commission,
2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833–4231;
Telephone: 916–263–4600, Fax: 916–263–0499.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting Pam Ramsay at the address or telephone number listed above or accessing the Commission's website at http://www.cgcc.ca.gov. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Regulations Coordinator or viewed on the website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the comment period, the Commission may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Pam Ramsay at the address indicated above.

The Commission will accept written comments on the modified regulation for 15 days after the date on which it is made available.

TITLE 8. DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Industrial Relations ("Director") proposes to adopt and amend regulations governing (1) certified payroll records, and (2) the approval and operation of labor compliance programs by state and local agencies involved with public works construction contracts. The existing regulations are found in Subchapter 3, Article 6 and Subchapter 4 of Chapter 8, commencing with Section 16400, of Title 8 of the California Code of Regulations. The proposed amendments will add new regulations and will change some existing regulations. The Director proposes to adopt these new regulations and amendments after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING, WRITTEN COMMENT PERIOD, AGENCY CONTACTS

Public Hearing:

A public hearing will be held on the proposals as follows:

January 23, 2008 at 10:00 a.m.
Hiram Johnson State Building
Senator Milton Marks Conference Center — Benecia Room
455 Golden Gate Avenue
San Francisco, California 94102

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The Director requests but does not require persons who make oral comments to submit a written copy of their testimony.

Written Comment Period:

Any person or authorized representative may submit written comments relevant to the proposed regulatory action to the contact person listed below. The written comment period closes on January 23, 2008, at 5:00 p.m., and the Director will only consider comments received by that deadline. Written comments may be submitted in person at one of the hearings or by letter, facsimile, or e–mail as follows:

Department of Industrial Relations
Office of the Director — Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102
Facsimile: (415) 703–4277
E–mail: LCPcomments@dir.ca.gov

Agency Contacts:

Inquiries concerning the proposed regulations may be directed to:

Primary Contact:

John Cumming
Department of Industrial Relations
Office of the Director — Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102
(415) 703–4265

Back–up Contact:

Tess Gormley
Department of Industrial Relations
Office of the Director
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
(415) 703–5063

Questions about the substance of the proposed regulations may be directed to either Mr. Cumming or Ms. Gormley.

AUTHORITY AND REFERENCE

Authority: Labor Code sections 54, 55, 1742(b), and 1773.5.

Reference: Sections 17250.30 and 81704, Education Code; sections 6250 et seq., 6531, and 87100, et seq., Government Code; sections 55, 90.5, 226, 1720, et seq., 1729, 1741–1743, 1771.5, 1771.6, 1771.7, 1771.8, 1771.9, 1773, 1773.1, 1773.2, 1773.3, 1775, 1776, 1777.5, 1777.7, 1778, 1813, 1815, and 3070, et seq., Labor Code; and sections 20133, 20175.2, 20209.7, 20209.13, 20209.24, and 20919.3, Public Contracts Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Overview:

The laws regulating public works projects require among other things that workers employed on such projects be paid not less than the general prevailing wage rates, as determined under the Labor Code. Public agencies that award public works contracts (known as "awarding bodies") generally are required to inform public works contractors of this requirement, to monitor compliance by obtaining certified payroll reports from contractors, and to withhold contract payments when the relevant enforcing agency determines that a contractor has violated prevailing wage requirements. Prevailing wage laws are enforced primarily by the

State Labor Commissioner (also known as the Division of Labor Standards Enforcement). However, under certain circumstances awarding bodies may set up their own enforcement agencies, known as "labor compliance programs," to enforce prevailing wage requirements on public works contracts in which that awarding body participates.

Labor compliance programs were authorized with the adoption of Labor Code section 1771.5, which became effective in 1990. Subsection (b) of Labor Code section 1771.5 sets forth the general requirements for operating a labor compliance program, and subsections (c) and (d) of section 1771.5 specify that labor compliance programs must be approved and are subject to revocation of approval in accordance with regulations adopted by the Director of Industrial Relations. In 1992 the Director of Industrial Relations adopted numerous regulations governing public works, including the first regulations governing the approval of labor compliance programs as well as their reporting, monitoring, and enforcement responsibilities. Under the original statute and regulations, which offered higher prevailing wage exemptions for awarding bodies that handled all their own public works enforcement, there were about a dozen approved labor compliance programs.

Subsequent legislation began to require awarding bodies to adopt and enforce a labor compliance program, or to contract with a third party to adopt and enforce a labor compliance program as a condition for using specified funds or exercising certain contracting authority. Most notable among these statutes were Labor Code sections 1771.7 and 1771.8, which required awarding bodies to have labor compliance programs for any public works projects funded by the Kindergarten–University Public Education Facilities Bond Acts of 2002 and 2004 and the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. Several hundred new labor compliance programs sought and obtained approval as a result of this legislation, including numerous private third party programs that were approved to operate labor compliance programs under contract with awarding bodies. In 2004, the regulations governing labor compliance programs were amended to address these new statutory requirements and other changes in the laws pertaining to prevailing wage enforcement. Those amendments included some specific rules to govern third party programs.

As was noted in the Final Statement of Reasons for the 2004 amendments, certain proposals from that rulemaking were withdrawn in order to allow for more study and discussion with interested persons. The withdrawn proposals focused in particular on monitoring and enforcement responsibilities and rules governing the withholding of contract payments. This rulemaking now puts forth revised proposals covering those subjects and as well as other matters suggested both by the regulated public and the Department's own regulatory experience. The purpose and intent of this rulemaking is to provide further clarity of reporting, monitoring, and enforcement responsibilities, to make it easier for labor compliance programs to carry out their statutory responsibilities in a proper and effective manner, while allowing for more effective oversight of that work by the Department. These proposals are also presented in response to concerns expressed by labor compliance program administrators, interest groups, legislators, and other agencies that a lack of specificity and measurable performance standards has led both to confusion and inefficient or lax enforcement by many labor compliance programs.

Proposed Amendments to Existing Regulations and New Regulations

The Director proposes to amend the regulations found in subchapter 3, Article 6, and subchapter 4 of Chapter 8 of Division 1, sections 16400 through 16439, title 8 of the California Code of Regulations, including revisions to existing text and the addition of three new regulations.

The Director proposes to add a new *section 16404* to expressly authorize contractors and subcontractors to maintain and submit electronic payroll records, subject to specified conditions.

Existing *section 16421* pertains to the composition and components of a labor compliance program. The Director proposes to amend subpart (a)(3) to require that certified payroll records be furnished to the Labor Compliance program at least monthly or upon request. The Director also proposes to add a new subpart (e) to state policy standards on what constitutes appropriate labor compliance program enforcement, and a new subpart (f) to clarify that a labor compliance program's failure to meet monitoring and enforcement standards is not a defense to failing to pay the prevailing wage. The Director also proposes to add to the suggested pre–job conference check–list in Appendix A, a new item covering the Labor Code section 226 requirement to provide employees with itemized wage statements.

Existing *section 16422* pertains to applicable dates for labor compliance program enforcement. The Director proposes to delete the words, "initial or final" in subpart (b) to conform with proposals that will delete the concepts of "initial" and "final" approval in sections 16425 through 16427. The Director proposes to amend subpart (d) to clarify that the existing procedure for notifying awarding bodies of their responsibilities upon revocation pertains to in house awarding body programs that have been approved pursuant to section 16425. The Director proposes to add a new subpart (g) with specific notification and transition procedures to

be followed by third party programs (approved pursuant to section 16426) upon receipt of notice of revocation by the Director.

Existing *section 16423* currently specifies that awarding bodies may not use certain bond funds unless they adopt labor compliance programs, and it sets forth requirements for adopting a written finding and giving notices to the Director and Labor Commissioner. The Director proposes to delete the existing language in subpart (a) and replace it with language clarifying that whenever an awarding body is required by statute to have a labor compliance program, it must have its own approved program unless it fully contracts out responsibilities to an approved third party program. The Director proposes to amend subpart (b) by deleting the requirement to provide the Labor Commissioner with the required notices, while adding language to require that the requisite notices be furnished to the Director prior to certifying to any other entity that the Awarding Body has complied with a statutory requirement to have a Labor Compliance Program. The Director also proposes to add a new subpart (c) to clarify that an approved labor compliance "program" refers to the entity that has applied for and obtained approval from the Director rather than the entity's manual or methodology for conducting labor compliance enforcement. The Director is proposing an additional new subpart (d) to specify that separate approvals are not required for different types of projects or funding sources. The Director proposes to redesignate existing subpart (c) as subpart (e) and then to list all state statutes with a labor compliance program requirement (11 in effect and one provisional as of 1–1–2008) in a separate Appendix B.

Existing *section 16424* pertains to procedures for applications for approval of labor compliance programs. The Director proposes to delete the word "initial" in the text to conform to proposed changes in sections 16425 through 16427.

Existing *section 16425* pertains to applications for approval of awarding body or "in house" labor compliance programs. The Director proposes to delete the word "initial" wherever it appears to conform to proposed changes in other regulations. The Director has redrafted the first paragraph (a) to improve its clarity. The Director proposes to amend subpart (b) by increasing the Director's deadline to grant approval or provide notice that an application is incomplete or disapproved from 30 to 60 days. The Director proposes to delete the language of subpart (c) pertaining to automatic expiration of initial approval and authorizing initial approvals up to 18 months in certain circumstances; and the Director proposes to substitute language that generally authorizes the Director to grant approval on an interim or temporary basis and to impose specific conditions on that approval, subject to reasonable conditions for removing the interim or temporary designation. The Director proposes to add conforming language to subpart (d) regarding the listing of programs with interim, temporary, or restricted approval. The Director also proposes to add a new subpart (e) to clarify that awarding bodies who intend to operate labor compliance programs on behalf of other awarding bodies must obtain approval pursuant to section 16426.

Existing *section 16426* pertains to applications for approval of third party labor compliance programs. The Director proposes to delete the word "initial" wherever it appears to conform to proposed changes in other regulations. The Director has redrafted the first paragraph (a) to improve its clarity. The Director proposes to add a new subdivision (9) to subpart (a) to require a specification of employees who will have governmental decision–making authority and how the program plans to handle Fair Political Practices Commission ("FPPC") reporting requirements. The Director proposes to amend subpart (b) to increase the deadline to grant approval or provide notice that an application is incomplete or disapproved from 30 to 60 days. The Director proposes to delete the language of subpart (c) pertaining to automatic expiration of initial approval and authorizing initial approvals up to 18 months in certain circumstances; and the Director proposes to substitute language that generally authorizes the Director to grant approval on an interim or temporary basis and to impose specific conditions on that approval, subject to reasonable conditions for removing the interim or temporary designation. The Director proposes to add conforming language to subpart (d) regarding programs with interim, temporary, or restricted approval.

Existing *section 16427* pertains to applications for final approval of a labor compliance program. The Director proposes to amend this section by deleting the words, "final approval" from the title and throughout the text, and substituting the words "extended authority." The Director proposes to amend subpart (a) to change the minimum experience required for final approval [current] or extended authority [proposed] from 11 months to three years. The Director also proposes to add language to subpart (b) clarifying that a program must demonstrate its "understanding and" ability to monitor compliance with the Labor Code and regulations. The Director proposes to extend the deadline in subpart (c) for granting or denying an application for final approval [current] or extended authority [proposed] from 30 to 90 days. In addition, the Director proposes to add a sentence to subpart (e) that would grandfather existing programs with "final approval" status into "extended authority" status if the other amendments are adopted.

Existing *section 16428* pertains to the Director's authority to revoke approval of a Labor Compliance Pro-

gram. The Director proposes to add a new subdivision (5) to subpart (a) to specify that failing to comply with statutory requirements or the Director's conditions or restrictions is a cause for revocation. The Director also proposes to add a new subpart (e) to authorize the Labor Commissioner to investigate programs and serve as prosecutor in revocation proceedings, subject to the Director's authority to make final determinations. The Director proposes to redesignate existing subpart (e) as subpart (f) and clarify that nothing in this regulation limits the Director from imposing conditions or restrictions in lieu of revocation.

Existing *section 16429* pertains to notices of approval. The Director proposes to delete the words "initial or final" from this regulation to conform to changes proposed for sections 16425 through 16427.

The Director proposes to add a new *section 16430* pertaining to the filing of economic interest statements by labor compliance program personnel. Subpart (a) would specify that awarding bodies must determine and designate which employees and consultants (employed by labor compliance programs) have Political Reform Act reporting responsibilities and then require the employees and consultants to comply with those responsibilities. Subpart (b) would require designated employees and consultants to meet those responsibilities and to file disclosure statements with the relevant awarding body unless the Director or the FPPC provides for a different filing location.

Existing *section 16431* pertains to annual reports, and the Director is proposing two different options for amending the regulation, with both options designed to provide more specific reporting information. In addition to comments on the contents of these proposals, the Director invites comment on which option is preferable or whether some combination of the two or a different approach to annual reports would be more appropriate.

In Option A, the Director proposes to amend subpart (a) to require separate reporting for each awarding body covered in a third party program's annual report. Subpart (a)(4) would be amended and subparts (a)(5) and (a)(6) added to provide a separate breakdown of voluntary wage recoveries or wages recovered without seeking a penalty determination from the Labor Commissioner, as well as such additional information as the Director may require as a condition of approval. The Director proposes to redesignate existing subpart (a)(5) as subpart (b) and to make other non–substantive clarifying changes, while deleting existing subpart (b) (pertaining to use of summary reporting formats by statewide programs). The Director proposes to add a new subpart (c) to require reporting in sufficient detail to afford a basis for evaluating enforcement activity, and provide for the availability of suggested forms with the necessary detail on the Department's website. Existing subpart (c) would be redesignated as subpart (d) and a spelling error in the current language would be corrected (changing "proceeding" to "preceding").

In Option B, the Director proposes to amend subpart (a) by deleting the enumeration of subjects in subparts (a)(1) through (a)(4) and instead requiring programs to use specified Annual Report forms (designated LCP–AR1, LCP–AR2, and LCP–AR3) according to the type of program that is submitting the report, unless the Director has agreed to a different reporting format for a program with final approval or extended authority under section 16427. As in Option A, former subpart (a)(5) would be redesignated as subpart (b), with other non–substantive clarifying changes. In Option B, the Director also proposes to delete the existing subpart (b), pertaining to use of summary reporting formats by statewide programs, and add a new subpart (c) to require reporting in sufficient detail to afford a basis for evaluating enforcement activity. Existing subpart (c) would be redesignated as subpart (d) and a spelling error in the current language would be corrected (changing "proceeding" to "preceding").

Existing *section 16432* currently pertains to audits, and the Director is proposing two different options for amending this regulation, with both options designed to set forth minimum performance standards for monitoring, investigations, and audits in substantially greater detail than set forth in the existing regulation. In addition to comments on the contents of these proposals, the Director invites comment on which option is preferable or whether some combination of the two or a different approach to monitoring, investigation, and audit responsibilities would be more appropriate.

In Option A, the Director proposes to revise subpart (a) by adding language to require that a labor compliance program check that all weekly payroll records are submitted and are complete, with all appropriate data elements reported and the certifications completed and signed pursuant to Labor Code section 1776(a). A new proposed subpart (b) would require the labor compliance program to inspect all payroll records once during the initial quarter of a contractor's or subcontractor's work, allow for inspection by sampling to ensure that the appropriate prevailing wage rates are being used, and require inspections at least quarterly thereafter, consistent with demonstrated past compliance, provided that each contractor and subcontractor's payroll is inspected at least once. A new proposed subpart (c) would require an investigation, which may include interviewing workers and inspecting other records, upon discovery of possible prevailing wage law violations or receipt of a credible complaint. Existing subpart (b) pertaining to audits would be redesignated as subpart (d), and language would be added to reiterate when audits may be conducted and specify that audits may be

limited to specific contractors and workers identified during inspections or investigations. A new proposed subpart (e) would specify that once a program determines that violations have occurred, (1) notice and an opportunity to respond may be provided to the contractor and affected subcontractor, who would then have 30 days to provide exculpatory information that can be used to mitigate penalties under Labor Code section 1775. This new subpart would also authorize the labor compliance program to resolve wage deficiencies under certain circumstances without requesting a penalty determination by the Labor Commissioner, provided that the program supplies the Labor Commissioner with documentation of its actions, including proof of prompt payment and the contractor or affected subcontractor's exculpatory information. Finally, in Option A, Appendix B would be redesignated as Appendix C in light of the proposal for a new Appendix B following section 16423.

In Option B the Director proposes to delete all of the existing language of section 16432 and replace it with a complete redraft of the standards governing investigations, payroll record review, audits, on–site visits, and early resolution of audits. Proposed subpart (a) contains introductory language setting forth the intent and scope of the regulation. Subpart (b) would set forth minimum standards for the review of contractor and subcontractor payroll records. Subpart (c) would set forth minimum standards for the confirmation of payroll records, defined as an independent corroboration of reported prevailing wage payments. Subpart (d) would set forth minimum standards for conducting on–site visits, and would require that such visits be undertaken during each week workers are present at the site where the contract for public work is being performed. Subpart (e) would define "audit" as "a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code sections 1775 and 1813, . . . after consideration of the best information available . . . ." Proposed subpart (e) enumerate types of available information that may be relevant to an audit, and it prescribes standards for the sufficiency of an audit (including suggested use of the audit forms within a new proposed Appendix C following section 16432), and the maintenance of audit records for use in review proceedings under Labor Code section 1742. Proposed subpart (f) would specify that once a program determines that violations have occurred, notice and an opportunity to respond may be provided to the contractor and affected subcontractor. The contractor and subcontractor would then have 10 days to provide exculpatory information that can be used to mitigate penalties under Labor Code section 1775. This new subpart would also authorize the labor compliance program to resolve wage deficiencies under certain circumstances without requesting a penalty determination by the Labor Commissioner, provided that the program supplies the Labor Commissioner with documentation of its actions, including proof of prompt payment and the contractor or affected subcontractor's exculpatory information. Finally, in Option B, the Director proposes to delete the existing Appendix B and replaces it with a new Appendix C consisting of three Audit Record worksheets, traditionally used by the Labor Commissioner, that are referenced in proposed subpart (e) of this Option.

Existing *section 16434* pertains to labor compliance program duties, and the Director is proposing two different options. Each would designate the existing language as subpart (a) and modify that language to clarify that posted public works coverage determinations provide guidance for enforcement decisions. Each option would then provide an expanded list of specifically enumerated duties. In addition to comments on the contents of these proposals, the Director invites comment on which option is preferable or whether some combination of the two or a different approach to labor compliance program duties would be more appropriate.

In Option A, the proposed new subpart (b) would set forth a labor compliance program's specific duties with respect to apprentices. Proposed subpart (c) would specify that a labor compliance program has the responsibility to demonstrate that it operates an effective program and would set forth standards for the contents and retention of enforcement records as well as requiring the program to supply the records to the Director upon written request.

In Option B, the proposed new subpart (b) would set forth procedures and standards for the handling of written complaints alleging that a contractor or subcontractor has failed to pay prevailing wages. A proposed new subpart (c) would set forth a labor compliance program's specific duties with respect to apprentices [organized somewhat differently than the comparable proposal in Option A]. A new subpart (d) would require labor compliance programs to maintain a separate record of compliance activities for each public works project in order to demonstrate enforcement efforts consistent with the practice of the Labor Commissioner. This subpart refers to a suggested reporting format (Appendix D) and includes standards governing both the retention of enforcement records and the electronic maintenance and transmission of reports. A new proposed subpart (e) would authorize the Labor Commissioner to provide, sponsor, or endorse training on how to enforce prevailing wage requirements, which would include four specified components. A new proposed Appendix D for Option B only, would be a single project report form corresponding to the project summary required under proposed subpart (d).

Existing *section 16435* currently pertains to the withholding of contract payments for delinquent or inadequate payroll records or due to an underpayment of prevailing wages. The Director is proposing to split these withholding provisions into two separate regulations, returning to the format that existed prior to the 2004 amendments. Under the proposed amendments, section 16435 would address only withholding due to delinquent or inadequate payroll records. Non–substantive changes are proposed for existing subparts (a) through (d) to improve the clarity of the text. Existing subpart (e) would be deleted from this regulation and become subpart (c) in proposed new section 16435.5. The Director proposes to add a new subpart (e) to specify that withholding for delinquent or inadequate payroll records does *not* require prior approval by the Labor Commissioner, while prescribing limits on the amount of payments that may be withheld for delinquent or inadequate payroll records. A new subpart (f) would set forth notice requirements for this form of withholding, with the right to request an expedited hearing limited to this issue. Proposed subpart (g) would specify that withholding may not continue after required records are produced, and subpart (h) would specify that Labor Code Section 1776(g) penalties shall be assessed for noncompliance with a written request for certified payroll records, but that an assessment of those penalties does require the prior approval of the Labor Commissioner under Section 16436.

The Director proposes a new *section 16435.5* to address withholdings due to underpayments of prevailing wages separately from withholdings due to delinquent or inadequate payroll records (which will remain in section 16435). Proposed subpart (a) would incorporate the definitions of "withhold" and "contracts" from subparts (a) and (b) respectively of section 16435. Subpart (b) would require that a general contractor receive notice of a subcontractor's violations [same as requirement found in section 16435(a)]. Proposed subpart (c) restates without modification the language now found in subpart (e) of section 16435 (prescribing what constitutes "amount equal to the underpayment"). Proposed subpart (d) would specify that withholding of contract payments due to underpayments of prevailing wages does require the prior approval of the Labor Commissioner under Sections 16436 and 16437.

Existing *section 16436* pertains to forfeitures requiring the Labor Commissioner's approval. The Director proposes to delete the existing language of subpart (a) and replace it with an expanded and more specific definition of the term "forfeitures." The Director also proposes to delete all of the existing language of subpart (b), enumerating types of violations that lead to underpayments and forfeitures, and to replace it with language allowing for assessments of less than $1000.00 in aggregate to be deemed approved automatically upon service of prescribed paperwork on the Labor Commissioner. A new subpart (c) would specify that all other forfeitures require the Labor Commissioner's approval in accordance with section 16437.

Existing *section 16437* pertains to determinations of forfeiture amounts by the Labor Commissioner. Subpart (a) sets forth information a labor compliance program is required to provide with a request for approval of forfeiture. The Director proposes to amend subparts (a)(1), (4), and (9), respectively to include within the request, the amount of funds being held in retention by the awarding body, any audit summary showing amounts due [Option A] or the Audit required under the Option B proposal for section 16432 [Option B], and revised information concerning the labor compliance program's approval status. Minor grammatical changes are proposed for subpart (d). The Director is also proposing non–substantive revisions to subparts (e)(1) and (e)(2) to conform to proposed changes in sections 16425 through 16427.

Existing *section 16439* pertains to formal review proceedings following the issuance of a Notice of Withholding of Contract Payments pursuant to Labor Code section 1771.6. The Director proposes to add a new subpart (c) to specify that, except for review proceedings in which the Labor Commissioner has intervened, a labor compliance program has full authority to prosecute and settle its own cases, subject to a duty to document its reasons for any settlement or requested dismissal of a Notice of Withholding of Contract Payments.

Comparable Statutes and Regulations:

Federal law requires the payment of prevailing wages and adherence to other minimum employment standards for work performed on federal public works projects through the Davis–Bacon Act, 40 U.S.C. sections 276a — 276a–7, the Contract Work Hours and Safety Standards Act, 40 U.S.C. sections 327 — 334, and related statutes that incorporate these requirements into specific federal programs. (See 29 C.F.R. § 5.1 for a list of 60 such laws.) Some local entities, including the City and County of San Francisco, have their own prevailing wage ordinances. However, these laws all have distinct requirements in terms of the types of work covered, how prevailing wages are determined, and how prevailing wage requirements are enforced. California's system of labor compliance programs appears to be unique in terms of delegating the state's enforcement authority under state prevailing wage statutes to local agencies and further authorizing those local agencies to contract with private entities to carry out their labor compliance responsibilities.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Director has made the following initial determinations with respect to these proposals. The Director notes that these proposals clarify existing statutory and regulatory standards. As such, these proposals impose no mandates, costs, or savings that are different or distinct from what the Legislature has required by statute. The Director invites further comment on these specific impacts.

Mandates on Local Agencies or School Districts:

The proposals do not impose mandates on local agencies or school districts. The adoption of Labor Code sections 1771.7 and 1771.8 made it mandatory for local agencies and school districts to maintain and operate a labor compliance program in order to obtain certain school and water project construction funds. Other statutes have imposed the same requirement as a condition for exercising other authorities, such as entering into design–build contracts. Labor Code section 1771.5(c) requires these statutorily–mandated labor compliance programs to be approved by the Director of Industrial Relations as specified in state regulations, and currently there are over four hundred approved labor compliance programs.

Costs or Savings to State Agencies; Reimbursable Costs Imposed on Local Agencies or School Districts; other nondiscretionary costs or savings imposed on local agencies; and costs or savings in federal funding to the state:

No savings or increased costs to any State agency will result from the proposed regulatory action.

No nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action. The proposed regulatory action does not impose costs on any local agency or school district which must be reimbursed in accordance with Government Code Section 17561. The requirement to adopt and enforce a labor compliance program is imposed only if an awarding body voluntarily decides to participate and utilize funding for public works projects.

The proposals do not involve any costs or savings in federal funding to the state.

Initial Determination of Economic Impact on Business:

The Director has made an initial determination that these proposals will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The prevailing wage statutes impact only businesses that choose to enter into public works contracts, and they are neutral in their treatment of California businesses as compared to businesses from other states.

Known Cost Impacts on Representative Private Person or Business:

These proposals are directed primarily toward local agencies and school districts that maintain and operate labor compliance programs. The Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code section 11346.3, subpart (b)):

The Director has made initial determinations that (1) these proposals will not affect the creation or elimination of jobs within the State of California; (2) these proposals will not affect the creation of new businesses or the elimination of existing businesses within the State of California; and (3) these proposals will not affect the expansion of businesses currently doing business within the State of California.

Reporting Requirements (Finding under Government Code section 11346.3, subpart (c)):

These proposals impose specific reporting requirements on businesses that have been approved as contract third party labor compliance programs (currently about sixty in number statewide). Such businesses conduct this work as agents of local and state government rather than as a private enterprise, and the Director makes a preliminary finding that the increased reporting responsibilities are necessary for the proper enforcement of the state's prevailing wage laws and therefore necessary for the welfare of the people of the State of California.

Effect on Housing Costs:

These proposals have no effect on housing costs.

Effect on Small Business:

The Director has made an initial determination that these proposals will not affect small business. The proposals and the regulations they would amend are directed toward public agencies that elect to enforce public works prevailing wage requirements by adopting and enforcing a labor compliance program. None of the proposals are regulations that small businesses legally would be required to comply with or that small businesses legally would be required to enforce. Small business will derive no new or distinct benefit nor will they incur any new or distinct detriment from the enforcement of these proposals.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Director must determine that no

reasonable alternative considered by the Director or that otherwise has been identified and brought to the Director's attention would either be more effective in carrying out the purpose for which the action is proposed or be as effective as the proposed action and less burdensome to affected private persons. These proposals consist of a series of amendments to existing regulations governing labor compliance programs and appear to be the most feasible approach for clarifying and making more specific the reporting, monitoring, and enforcement responsibilities of labor compliance programs. Other alternatives, including more Department–sponsored training and legislative proposals to establish performance standards at this time would appear to be both more burdensome and less effective in addressing these issues. The Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSED ACTION

The Director will have the rulemaking file available for inspection and copying throughout the rulemaking process. Initially the file will consist of this notice, the initial statement of reasons, and the text of the proposed regulations, including proposed forms. The text of the file will be available at the following location:

Department of Industrial Relations
Office of the Director — Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102

or from contact person John Cumming.

Website:

Rulemaking records, including the text of the proposed regulations may be accessed through the Department's Internet website at http://www.dir.ca.gov/DIRRulemaking.html.

Availability of Changed or Modified Text:

After holding the hearings and considering all timely and relevant comments received, the Director may adopt the proposed regulations substantially as described in this notice. If the Director makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available to the public for at least 15 days before the Director adopts the regulations as revised. Any such modifications will also be posted on the Department's website. Please send requests for copies of any modified regulations to the attention of the contact persons listed above. The Director will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Availability of the Final Statement of Reasons and the Rulemaking File:

Upon completion, the Final Statement of Reasons will be available and the entire rulemaking file may be obtained from the contact persons named in this notice.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

NOTICE OF RULEMAKING

Workers' Compensation — Qualified Medical Evaluator Regulations
(Title 8, California Code of Regulations sections 1–159)

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation (hereafter "Administrative Director"), proposes to adopt, amend and repeal regulations to implement the provisions of Labor Code sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5, and 4660 through 4663 regarding the examination, appointment, reappointment and discipline of Qualified Medical Evaluators and the procedures for obtaining QME medical–legal evaluations, that are used to resolve disputes in the workers' compensation system. This action is taken pursuant to the authority vested in the Administrative Director by Labor Code sections 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3.

When adopted, the proposed regulations will constitute title 8, California Code of Regulations, Division 1, Chapter 1, Articles 1 through 15, sections 1 through 159. The regulations implement, interpret and make specific the manner in which the Administrative Director will exercise the authority under Labor Code sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5, and 4660 regarding the appointment of Qualified Medical Evaluators and the procedures concerning medical evaluations.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt, amend or repeal the following regulations in Division 1, Chapter

1, Articles 1 through 15, of Title 8, California Code of Regulations, commencing with Sections 1 through Section 159. The proposed changes involve both changes without regulatory effect ("non–substantive" changes) within the meaning of section 100 of Title 1 of the California Code of Regulations (e.g. grammatical, capitalization, punctuation, syntax, numbering and lettering sequencing and corrections of cross references), as well as substantive changes. A comprehensive summary of the proposed change to each affected section is set out in the Initial Statement of Reasons, which is not printed here but will be available at no charge upon written request made to Regulations Coordinator below or via the web at: http://www.dir.ca.gov/dwc/DWCrulemaking.html.

PUBLIC HEARING

A public hearing has been scheduled in Los Angeles and Oakland to permit all interested persons the opportunity to present statements or argument, either orally or in writing, about the subjects noted above. The hearings will be held at the following times and places:

Date: Monday, January 14, 2008
Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business
Place: Ronald Reagan State Office Building — Auditorium
300 South Spring Street
Los Angeles, California 90013

Date: Thursday, January 17, 2008
Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business
Place: Elihu Harris State Office Building — Auditorium
1515 Clay Street
Oakland, California 94612

The State Office Buildings and its Auditoriums are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Kathleen Estrada, at 1–866–681–1459 (toll free), or through the California Relay Service by dialing 711 or 1–800–735–2929 (TTY/English) or 1–800–855–3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

In order to ensure unimpeded access for disabled individuals wishing to present comments and facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room. To provide everyone a chance to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at 5:00 p.m., on Thursday, January 17, 2008. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 p.m. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above–named contact person at (510) 286–0687. Written comments may also be sent electronically (via e–mail) using the following e–mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than 5:00 p.m. on Thursday, January 17, 2008.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code section 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3.

Reference is made to Labor Code sections 139.2, 139.4, 139.45, 3716, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5, 4628 and

4660; Government Code sections 6254, 14755; Business and Professions Code section 730.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes to amend, repeal and add to various regulations that govern the examination, appointment, reappointment and discipline of physicians who are certified as Qualified Medical Evaluators ("QME's") and that govern procedures for obtaining QME panels (lists of 3 QMEs), as provided in sections 1 through 159 of Title 8 of the California Code of Regulations. These changes are needed to conform to statutory made changes to the Labor Code by SB 228 [Stats. 2003, ch. 639 (SB 228) (Alarcon)], SB 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004], AB 1756 [Stats. 2003, ch. 228 (AB 1756), effective August 11, 2003], AB 776 [Stats. 2000, ch. 54 (AB 776)]. In addition, other changes are proposed to improve the QME system for those who must use it. A fuller summary of the proposed changes is provided in the Initial Statement of Reasons.

SB 228 [Stats. 2003, ch. 639 (SB 228) (Alarcon)], among other things, repealed Labor Code section 139, thereby eliminating the Industrial Medical Council ("IMC" or "council"), and amended Labor Code section 139.2 to transfer all authority to the Administrative Director of the Division of Workers' Compensation to regulate (examine, appoint, reappoint, and discipline) physicians who are Qualified Medical Evaluators. This rulemaking eliminates all references to the IMC and replaces those references with the Administrative Director.

SB 228 also repealed Labor Code section 139(e)(8), by which authority the IMC had adopted medical treatment guidelines for common industrial injuries. SB 228 added Labor Code sections 5307.27 and 4604.5, to require the Administrative Director to adopt a medical treatment utilization schedule that addresses the frequency, duration, intensity and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases (Lab. Code § 5307.27) and to provide that until the medical treatment utilization schedule has been adopted the updated medical practice guidelines of the American College of Occupational and Environmental Medicine ("ACOEM") shall be presumptively correct on this issue of extent and scope of medical treatment. This rulemaking deletes Article 7 ("Practice Parameters for the Treatment of Common Industrial Injuries"), sections 70–77 of Title 8 of the California Code of Regulations, and makes other amendments to the regulations to make appropriate reference to the medical treatment utilization schedule (MTUS) and the ACOEM guidelines consistent with Labor Code sections 4604.5 and 5307.27.

AB 776 [Stats. 2000, ch. 54 (AB 776)] amended Labor Code section 139.2(b) to delete wording pertaining to physicians who were 'board qualified' and physicians who failed board specialty certification examinations. This rulemaking deletes wording from QME Form 100 (section 100) that was based on the deleted statutory language.

Section 35 of AB 1756 [Stats. 2003, ch. 228 (AB 1756), effective August 11, 2003], amended Labor Code section 62.5 to create the Uninsured Employers Benefit Trust Fund, and section 37 of AB 1756 made conforming amendments referring to the Uninsured Employers Benefit Trust Fund. This rulemaking amends the definitions in section 1 to refer correctly to the Uninsured Employers Benefit Trust Fund. The rulemaking also changes the way the Uninsured Employers Benefit Trust Fund is referenced in the definition of 'employer' in section 1.

SB 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004], among other things, amended the Labor Code in ways that changed both what Qualified Medical Evaluators must use in evaluating whether medical treatment is reasonable and necessary, the nature and extent of permanent impairment and permanent disability and the procedures for obtaining an evaluator in represented cases with a date of injury on or after January 1, 2005.

1) Labor Code section 4660(d) was amended to require that the description of the nature of physical injury or disfigurement must incorporate the descriptions and measurements of the physical impairments and corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th edition) (the "AMA Guides"). Labor Code section 4663 was added, to require among other things, that for a physician's report to be complete on the issue of permanent disability the report must include an apportionment determination and the section specifies how the physician is expected to calculate apportionment. This rulemaking amends the disability writing course requirements, the continuing education course requirements and the regulations that govern the procedures for evaluating various common industrial injuries to refer to these changes and to the requirement to use the AMA guides.
2) Labor Code section 4604.5 was amended to provide, among other things, that medical treatment, consistent with the updated American

College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines (the "ACOEM guidelines") shall be presumptively correct on the issue of the intent and scope of medical treatment, regardless of the date of injury, until the Administrative Director adopts a medical treatment utilization schedule pursuant to Labor Code section 5307.27. The Medical Treatment Utilization Schedule (MTUS) was adopted in regulation by the Administrative Director effective June 15, 2007 as sections 9792.20 *et seq.* of Title 8 of the California Code of Regulations. This rulemaking amends the disability writing course requirements, the continuing education course requirements and the regulations that govern the procedures for evaluating disputes over reasonable and necessary medical treatment to refer to the MTUS and relevant portions of the ACOEM Practice guidelines.

3) Labor Code section 4600(b) was amended to provide that "medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27 or, prior to the adoption of those guidelines, the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines." Because Qualified Medical Evaluators must offer medical opinions on disputes regarding whether medical treatment is or was reasonably required to cure or relieve from the effects of industrial injury, this rulemaking amends various QME regulations to refer to the MTUS and relevant portions of the ACOEM Practice guidelines.

4) The Labor Code sections that govern the process for obtaining evaluators, either Agreed Medical Evaluators ("AME's") or Qualified Medical Evaluators ("QME's"), were changed by amendments to Labor Code sections 4060, 4061, and 4062 and due to the addition of Labor Code sections 4062.1 and 4062.2. Prior to these amendments by SB 899, in a case in which the injured worker was not represented by an attorney, the parties were required to obtain a QME panel (list of 3 QMEs) from the Division of Workers' Compensation. The QME selected from the panel would examine the injured worker and address the disputed issues in single comprehensive medical legal report that would be used to resolve the case. In represented cases, the parties were required first to attempt to agree on an Agreed Medical Evaluator within a specified period of time. If that effort failed, each party was entitled to select a QME which resulted in two medical–legal reports. SB 899 changed the procedure in *unrepresented* cases to allow the employer to request a QME panel, select the specialty of the QME and schedule the appointment, only after the injured worker fails to do so after being given the appropriate form and a specified amount of time to request a QME panel and to select a QME. SB 899 changed the procedure in *represented cases with dates of injury on or after January 1, 2005*, to require that when the represented parties fail to agree on an Agreed Medical Evaluator within a specified time, either party may request a QME panel. The party requesting the panel is entitled to select the specialty of the QME. The represented parties then have a specified number of days to select one of the listed QMEs to function as an AME, and if no agreement on an AME is reached, each party is required to strike one QME name. The remaining QME becomes the evaluator in the case so that only one comprehensive medical–legal report is issued. This rulemaking amends the regulations that govern the panel selection process, the criteria for obtaining a replacement QME or a replacement QME panel, the procedures for scheduling, conducting and for reporting the findings after the QME examination, the procedures for a QME to obtain an extension of time to complete a report, the QME ethical obligations, and the QME disciplinary sections to conform to changes made by SB 899.

Pursuant to Labor Code section 139.2(o) the Administrative Director is required, after consultation with the Commission of Health, Safety and Workers' Compensation, to adopt a regulation to implement section 139.2(o). This section provides, in pertinent part, that an evaluator ". . .may not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator. . ." On March 19, 2007, the Administrative Director forwarded a proposed regulation, section 41.5 of Title 8 of the California Code of Regulations, seeking the Commission's comments pursuant to Labor Code section 139.2(o). The Administrative Director received comments and suggestions from the staff of the Commission on April 2, 2007, and incorporated many of the suggestions into the proposed sections 41.5 and 41.6 included in this rulemaking.

Finally, this rulemaking proposes numerous "changes without regulatory effect", within the mean-

ing of section 100 of Title 1 of the California Code of Regulations, because the proposed amendments correct the punctuation, capitalization, grammar, syntax, number or letter sequencing, or cross references in the text.

In addition to these non–substantive changes, the following substantive changes are proposed:

CHAPTER 1

The title of this chapter is changed from 'Industrial Medical Council' to 'Division of Workers' Compensation — Qualified Medical Evaluator Regulations', due to the repeal of Labor Code section 139 and transfer to the Administrative Director of the Division of Workers' Compensation of all authority to regulate Qualified Medical Evaluators by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228) (Alarcon)].

Article 1. General (§1)

Section 1: The definitions section, which applies to §§ 1 through 122, is amended by adding new definitions for the terms "ACOEM" and "ACOEM Practice Guidelines", "AMA Guides", "AOE/COE", "education provider", "follow–up comprehensive medical–legal evaluation", "Medical Treatment Utilization Schedule (MTUS)", "primary practice location", "QME competency exam for acupuncturists", and "supplemental medical–legal evaluation" and "specified financial interests".

In addition the existing definitions for "Council", "provider", "qualified injured worker", and "treatment guideline" are deleted.

The proposed rulemaking also amends existing definitions for "Administrative Director", to add 'or his or her designee'; "Agreed Medical Evaluator"; "claims administrator", to add the phrase 'the person or entity responsible for the payment of compensation for' and to add 'the director of the Department of Industrial Relations as administrator for the Uninsured Employers Benefit Trust Fund (UEBTF), as well as limiting language that provides the UEBTF only becomes subject to the regulations after proper service has been made on the uninsured employer and the Appeals Board has obtained jurisdiction over the UEBTF; "comprehensive medical–legal report", to add the reference to Labor Code sections 4062.1 and 4062.2; "employer", to add the phrase 'any employer within the meaning of Labor Code section 3300, including but not limited to, any of the following:' as well as adding 'an insured employer', 'a self–insured employer' and 'a lawfully uninsured employer'; and "Medical Director", to add 'including his or her designee Associate Medical Directors'.

Article 2. QME Eligibility (§§10–19)

Section 10 adds new subdivisions that state a physician applicant currently serving probation imposed by his or her licensing board shall be denied appointment as a QME; that no physician who has been convicted of a felony or misdemeanor related to his or her practice shall be appointed or reappointed as a QME; that an applicant who has been convicted of any other type of felony or misdemeanor may be denied appointment or reappointment; that any physician or applicant who resigns while a disciplinary investigation is pending or after the service of a statement of issues or accusation is subject to having the investigation or proceeding reactivated, and may be denied appointment or reappointment.

Section 10.5, and the related QME Form 101, found in section 101 of Title 8 of the California Code of Regulations, are being repealed entirely. All physicians who apply for QME status must already have a current license from a California professional licensing board, accordingly all necessary determinations regarding citizenship and visa status will already have been made by the respective licensing agencies in California.

Section 11 is amended in proposed section 11(b)(2) is added to require the physician applicant to fully and accurately report all specified financial interests on QME Form 124 (Specified Financial Interests that May Affect the Fairness of QME Panels). Section 11(e)(1) is added to require the applicant to state any license restrictions or terms of probation imposed by the physician's licensing board. Section 11(e)(2) is amended to improve clarity and syntax. Section 11(e)(3) requires the applicant to declare under penalty of perjury that he or she has not performed a QME evaluation without holding current QME certification as required by Business and Professions Code section 730. Section 11(e)(4) is added to require applicants to declare under penalty of perjury that the office locations listed as "primary practice locations" are locations at which the physician performs five or more hours per week in direct medical treatment, or other specified activities for those applying under the AME, retired or faculty status. Section 11(e)(5) is added to require the applicant declare under penalty of perjury that he or she has fully and accurately reported all specified financial interests on QME Form 124. Section 11(f) requires licensed acupuncturists applying for appointment as a QME to pass the QME competency examination for acupuncturists. Section 11(f)(8) is added to provide that any applicant who, upon good cause shown by the test administrator, is suspected of cheating may be disqualified from the examination and if a finding is made that the applicant did cheat, the applicant will be denied admittance to the exam for at least two years.

§11.5 adds language stating that only report writing courses which are offered by education providers as defined in these regulations qualify to satisfy the QME's requirement to complete 12 hours of instruction in disability evaluation report writing prior to appointment.

In addition, subdivision 11.5(i) is amended to require course topics include discussion of the Medical Treatment Utilization Schedule and relevant portions of the ACOEM Practice guidelines, the AMA guides, the requirement in proposed section 35.5 to provide opinions that are consistent with the evaluation criteria specified in section 35.5(d) of Title 8 of the California Code of Regulations, and the changes in Labor Code sections 4660, 4663 and 4664 made by SB 899. Proposed § 11.5(j) adds a sentence that allows up to the full 12 hours of instruction to be completed by distance learning whenever the Administrative Director has approved the submitted course prior to the first day the course is given.

Section 12 is substantially amended to delete existing wording, and to provide that the Administrative Director shall recognize only those specialty boards recognized by the respective California licensing boards for physicians as defined in Labor Code section 3209.3.

Section 13 adds that to be listed as a QME in a particular specialty, the physician's licensing board must recognize the designated specialty board and the applicant must provide the Administrative Director with documentation from the relevant board of certification or qualification.

Section 14 is amended to require California professional chiropractic associations or accredited California colleges that apply to be recognized as education providers for doctors of chiropractic must include in the course curriculum the relevant regulations of the Administrative Director, the subjects outlined in Title 8 section 11.5(i) not already covered including the MTUS, relevant portions of the ACOEM Practice guidelines, the AMA guides and the changes to Labor Code sections 4660, 4663 and 4664 on apportionment.

Sections 15 and 16 are amended to improve syntax, grammar, cross reference and clarity.

Subdivision 17(b) is amended to require QME office locations must be in California, be identified by a street address and any other more specific location such as a suite number and must contain the usual and customary equipment for the type of evaluation appropriate to the QME's medical specialty or scope of practice. Subdivision 17(c) is added to allow each QME to designate up to four "primary practice locations", as that term is defined in section 1 of Title 8 of the California Code of Regulations, as well as additional office locations that do not fall within the definition. Subdivision 17(e) is added to enable the Administrative Director to waive any or all QME fees for any or all QMEs when doing so is in the best interests of employers and injured employees in the California workers' compensation system. Subdivision 17(f) is added to require all QMEs, at the time of paying the annual QME fee, to complete and forward updated information about specified financial interests that may affect the fairness of QME panels.

Sections 18 and 19 are reworded to improve the syntax and cross reference.

Article 2.5. Time Periods for Processing Applications for QME Status (§20)

§20 is edited to correct cross references and subdivision (d), which addresses the processing time in 1993, is deleted.

Article 3. Assignment of Qualified Medical Evaluators, Evaluation Procedure (§§ 29–39.5)

Section 29 is added. Subdivision 29(a) requires every physician who applies for appointment or reappointment as a QME to disclose specified financial interests. Subdivision 29(b) defines 'specified financial interests' as including: being a general partner or limited partner in, or having an interest of five (5) percent or more in, or receiving or being legally entitled to receive a share of five (5) percent or more of the profits from, any medical practice, group practice, medical group, professional corporation, limited liability corporation, clinic or other entity that provides treatment or medical evaluation services for use in the California workers' compensation system. Subdivision 29(c) explains that the 'SFI Form 124' as used in the QME regulations means the QME Form 124 that is completed and filed by a physician with any of the following forms: QME Forms 100, 103 or 104. Subdivision 29(d) requires that specified financial interests be disclosed, respectively, when a physician is applying for appointment on QME Form 100, at the time of paying the annual fee on QME Form 103 or when applying for reappointment on QME Form 104. Subdivision 29(e) requires the completed SFI Form 124 to be filed along with the QME Forms 100, 103 or 104, respectively, when the form is filed with the Medical Director of the Division of Workers' Compensation. Subdivision 29(f) provides that failure to complete and file a 'SFI Form 124' when required shall be grounds for disciplinary action. Subdivision 29(g) states that the Administrative Director shall use the information provided to avoid assigning QMEs who share specified financial interests to the same QME panel. When two or more QMEs assigned to a panel share specified financial interests, any party may request a replacement QME. The Medical Director shall randomly select one QME from among QMEs with shared specified financial interests to be replaced.

Section 30 has been changed to conform to the changes in the QME panel process enacted by SB 899. This section describes how parties in a workers' compensation case obtain a panel (list of three) QME. The existing QME Forms 105 and 106 are deleted in their

entirety. New QME Form 105, with an attachment, and 106, with an attachment, are proposed.

Subdivision 30(a) is amended to direct the parties in an unrepresented case to apply for a QME panel by submitting QME Form 105 to the Medical Unit of the Division of Workers' Compensation. As required by Labor Code section 4062.1, the claims administrator is required to provide QME Form 105 (Request for QME Panel under Labor Code Section 4062.1) and its attachment (How to Request a Qualified Medical Evaluator if you do not have an Attorney), an informational page, to the unrepresented injured employee. Subdivision 30(b) directs the parties in a represented case with a date of injury on or after January 1, 2005, and for all other cases where represented parties agree to obtain a QME panel pursuant to the process in Labor Code section 4062.2, to apply for a QME panel by submitting QME Form 106 (Request for QME Panel under Labor Code Section 4062.2) with: 1) a statement of the disputed issue or issues; 2) a copy of the first written proposal for an AME; 3) a specialty selected for the QME panel, as well as the specialty of the treating physician and the specialty preferred by the opposing party, if known. Subdivision 30(b) also provides that when parties represented by an attorney in a case with a date of injury prior to January 1, 2005, agree to use the QME panel process under Labor Code section 4062.2, either party may request a QME panel upon submission of the documents required by section 30 and evidence of the parties' agreement. Subdivision 30(c), the former subdivision 30(b), has been amended to add a sentence allowing the Medical Director to delay issuing a new QME panel, if necessary, until the parties answer a request from the Medical Director for information about whether a QME panel previously issued in the case was used. Existing subdivision 30(c) is deleted because the instruction sheet referred to in that section has been revised as an attachment to QME Forms 105 and 106, respectively, and is already referred to in proposed subdivisions 30(a) and 30(b).

Existing subdivisions 30(d)(1) and 30(d)(2) are deleted because they applied to unrepresented cases with dates of injury between January 1, 1991 and December 31, 1993, or dates of injury on or after January 1, 1994, respectively. Due to the amendments by SB 899, in all unrepresented cases, regardless of the date of injury, the procedures in Labor Code section 4062.1 apply. New subdivision 30(d)(1) is added to provide that after a claim form is filed, an employer, or the employer's claims administrator, may request a panel of Qualified Medical Evaluators as provided in Labor Code section 4060, to determine whether to accept or reject part or all of a claim within the period for rejecting liability in Labor Code section 5402(b). New subdivision 30(d)(2) is added to provide that once a claim administrator, or if none, the employer has accepted as compensable any body part in the claim, a request for a panel QME may only be filed based on a dispute arising under Labor Code section 4061 or 4062. New Subdivision 30(d)(3) is added to provide that whenever an injury or illness claim has been denied entirely by the claims administrator or, if none, by the employer within the time allowed under Labor Code section 5402(b), only the employee may request a panel of QMEs pursuant to Labor Code sections 4060(d) and 4062.1(b), if unrepresented, or as provided in Labor Code sections 4060(c) and 4062.2, if represented.

New Subdivision 30(d)(4) is added to provide that after an injury or illness claim has been accepted or after the ninety (90) day period for denying liability has expired and either the employee or the claims administrator or, if none, the employer asserts for good cause that a comprehensive medical/legal evaluation is needed to determine compensability, the parties shall, to the extent feasible, obtain a follow–up evaluation or a supplemental evaluation from the Agreed Medical Evaluator or the Qualified Medical Evaluator who has already reported in the claim. "Good cause" as used in subdivision 30(d)(4) includes evidence discovered after the period specified in Labor Code section 5402(b). In the event the evaluator who previously reported is no longer available or is not medically qualified to address the disputed compensability issue or there has been no prior comprehensive medical/legal evaluation in the claim, the party seeking the evaluation shall follow the procedures set out in Labor Code section 4060(c) or 4060(d), as applicable. The party requesting a panel of Qualified Medical Evaluators for this reason shall attach to the QME Form 105 or QME Form 106, as applicable, submitted to the Medical Director, a description of the newly discovered evidence or other reason for an evaluation to determine compensability at this time.

Subdivision 30(e) contains minor edits to allow parties in both unrepresented and represented cases to agree, when the injured employee has moved out of state, on the geographic area for the QME panel selection.

New Subdivision 30(f) is added to provide that the Medical Director shall give 1.5 times the weight to those QME locations identified as "primary practice locations" as defined in section 1(x) of Title 8 of the California Code of Regulations, when the Medical Director compiles a panel list of three QMEs. New Subdivision 30(g) is added to provide that to compile a panel list of three independent QMEs randomly selected in the designated specialty, the Medical Director shall exclude from the panel, to the extent feasible, any QME who is listed by another QME as a business partner or as having a shared specified financial interest as those terms are defined in sections 1(dd) and 29 of Title 8 of the California Code of Regulations.

Section 30.5 is amended to provide that the Medical Director shall issue a panel in the specialty indicated by the person requesting the panel by use of QME Form 105 or 106, unless otherwise provided in these regulations.

Section 31 has been amended to make the wording apply to requests from either the injured employee or the employer under circumstances set out in Labor Code §§ 4062.1 and 4062.2. A new subdivision 31(e) is added to specify that to issue a panel in the specialty selected by the requestor, there must be at least 5 active QMEs in the specialty, or the Medical Director will contact the requestor for an alternate specialty.

Section 31.1 QME Panel Selection Disputes in Represented Cases is added to provide that when, in a represented case, the Medical Director receives two or more panel request forms from represented parties on the same day that designate different specialties for the QME panel, the Medical Director will: 1) issue the panel in the specialty of the treating physician as requested by one represented party, unless the party requesting a different specialty presents more persuasive supporting documentation and reasons for selecting a different specialty; and 2) if no party requests the specialty of the treating physician the Medical Director will select a specialty appropriate for the medical issue in dispute. Subdivision 31.1(b) requires a represented party who designates a specialty other than the specialty of the treating physician to submit relevant supporting documentation for the other specialty. Subdivision 31.1(c) provides that if the Medical Unit is unable to issue a panel in a represented case within 30 calendar days of receiving a request, either party may obtain an order from the Appeals Board that a QME panel be issued.

Section 31.5 QME Replacement Requests. The current regulation allows a QME's name on a QME panel to be replaced only when requested by an unrepresented injured employee, and under other conditions either party may request replacement of the QME. As proposed, the section will allow either party to request replacement of a QME for any of the reasons enumerated in the section.

Subdivision 31.5(a) is amended to add wording that allows the Medical Director to replace an entire panel of QMEs rather than simply replacing one QME named on an initial panel. Subdivision 31.5(a)(1) deletes the word 'employee' and inserts instead 'party holding the legal right to request the panel', because the amendments by SB 899 now allow the employer to designate the specialty of a QME panel when the employee fails to do so, under the circumstances set out in Labor Code sections 4062.1(b) and 4062.1(c). Subdivision 31.5(a)(2) strikes out the word 'employee's', because when the employee fails to select a QME and schedule an appointment, the employer may do so. Also, the words 'for an appointment' were added for clarity. Subdivision 31.5(a)(5) added the phrase 'Unavailability of the QME', which is the topic of section 33 of Title 8 of the California Code of Regulations. Subdivision 31.5(a)(6) (former 31.5(b)(1)) is re–worded for clarity and adds the phrase 'secondary physician'. Subdivision 31.5(a)(7) (former 31.5(b)(2)) is amended to strike 'unrepresented', in order that this reason may also apply in represented cases, and is amended to add 'in writing', to require a written agreement of the parties for obtaining a panel closer to the employee's workplace than his or her place of residence. Subdivision 31.5(a)(8)(former 31.5(b)(3)) adds 'or a replacement panel' to address cases in which the wrong specialty was requested. Subdivision 31.5(a)(9)(former 31.5(b)(4)) deletes 'injured workers' and adds instead 'party holding the legal right to designate the specialty'. This is needed to apply to both represented and unrepresented cases since both types of cases may request QME panels. Subdivision 31.5(a)(10)(former 31.5(b)(5)) adds the topic of regulation 34 and the full citation to Title 8 of the California Code of Regulations. Subdivision 31.5(a)(11) is new language that would permit a party to obtain a replacement QME or QME panel if the selected QME failed to complete the evaluation and report on time and both parties do not waive the right to a new QME, as provided under Labor Code section 4062.5. Subdivision 31.5(a)(12) is new language added to enable a party to obtain a replacement QME if a QME on the panel has a disqualifying conflict of interest as defined in section 41.5 of the regulations. Subdivision 31.5(a)(13) is new language added to enable a party to obtain a replacement QME after the Administrative Director has ordered that a new evaluation by a different QME be obtained. Subdivision 31.5(a)(14) is new language added to enable a party to obtain a replacement QME when the existing QME, who is otherwise qualified and competent to address all disputed medical issues, fails or refuses to provide a complete medical evaluation as required in Labor Code section 4062.3(i).

Existing subdivision 31.5(b) is deleted since all reasons for replacement requests apply regardless of the party requesting the panel. A new proposed subdivision 31.5(b) has new language added to address the circumstances under which the parties may obtain an additional QME panel in a different specialty from the first QME, for good cause. Good cause is defined as: 1) an order by the Workers' Compensation Appeals Board specifying the specialty for an additional QME panel; 2) when the existing AME or QME advises the parties and the Medical Director that some disputed medical issues should be addressed by a physician of another specialty and either the injured employee is unrepresented or the represented parties have been unable to agree on an AME for that purpose; 3) in a represented case,

where the parties agree there is a need for an additional evaluation and agree on the specialty but have been unable to select an AME; or 4) in an unrepresented case, when the parties have met with an Information and Assistance Officer, explained the need for another evaluation in a different specialty, the parties agree, in the presence of that Officer, on the specialty to be requested for the additional QME panel.

Subdivision 31.5(c) is new language added to provide, in a represented case, if a basis for an objection to the QME arises but is not provided in writing to the Medical Director at least two business days prior to the QME examination, it shall be deemed waived and not the basis for a replacement QME or QME panel.

Section 32 (Consultations) is amended. The existing wording of subdivisions 32(a) through 32(c) is deleted. Subdivision 32(d) is re–lettered to become subdivision 32(a). New subdivision 32(b) is added to provide that except for a QME acupuncturist, no other QME may obtain a consultation from another physician to have that physician evaluate impairment using the AMA guides or to determine permanent disability and apportionment consistent with the changes enacted by SB 899.

Section 32.5 (Rebuttal QME Examinations) is deleted entirely. The existing section specified when rebuttal QME examinations could be obtained by unrepresented employees with dates of injury between January 1, 1991, and December 31, 1993, and upon request by the Appeals Board for injuries occurring on or after January 1, 1994. The provisions of SB 899 which repealed and re–enacted Labor Code sections 4060 through 4062.2 have superseded the basis for this regulation.

New section 32.6 (Additional QME Evaluations Ordered by the Appeals Board) as proposed allows an additional QME panel to be issued if ordered by a Workers' Compensation Administrative Law Judge or the Appeals Board upon finding that an additional QME evaluation is reasonable and necessary to resolve a disputed issue arising under Labor Code sections 4060, 4061 or 4062. The order shall specify the specialty of the QME panel or shall designate the party to select the specialty of the QME panel.

New Section 32.7 Availability of QME for Panel Assignment is proposed. The purpose of this new section is to clarify for Qualified Medical Evaluators the minimum amount of appointment calendar time that must be made available on average each month for panel QME appointments.

Subdivision 32.7(a) requires each QME to ensure that sufficient calendar time is reserved each month for scheduling panel QME examinations in order to perform, if requested, the applicable number of QME panel examinations set out in subdivision (d) of the section.

Subdivision 32.7(b) provides that once the minimum number of QME panel examinations in a given 30 day period are scheduled, an evaluator may decline to schedule additional QME panel appointments and may advise parties who call that the QME is no longer available for QME panel appointments in that 30 day period. However, if a scheduled examination is cancelled or rescheduled, the QME must, if requested, schedule new QME panel examinations to meet the minimum as provided in subdivision (c).

Subdivision 32.7(c) provides that to fulfill the minimum monthly requirements, a QME must schedule, if requested, on average during a 90 day period, 3 times the applicable number listed in the chart in subdivision (d) of the section. Subdivision 32.7(d) provides a chart of numbers (i.e. 1 for QMEs whose fee is based on 0–10 evaluations per year; 2 for QMEs whose fee is based on 11–24 evaluations per year; 3 for QMEs whose fee is based on 25 or more evaluations per year). Subdivision 32.7(e) provides that whenever the injured employee fails to attend an examination without notice, the scheduled appointment shall be counted as though the examination had occurred. Subdivision 32.7(f) provides that upon request from the Medical Director, a QME shall provide a copy of the evaluator's office appointment calendar showing scheduled QME panel evaluation appointments for any period specified and shall also indicate which of the scheduled examinations was performed and the date the examination was done.

Section 33 is amended to clarify the conditions under which a QME may be designated as 'Unavailable' for panel selection. Subdivision 33(a) has been amended to specify that unavailable status may be granted for up to 90 days during a one year fee payment period. Subdivision 33(b) is added as new wording to require the QME to submit, at the time of applying for unavailable status, a list of evaluation examinations already scheduled during the time requested for unavailable status and to indicate whether each such examination is being rescheduled or the QME plans to complete the exam and report while on unavailable status. Subdivision 33(c) has been added to provide that a QME granted unavailable status may, during that time, complete reports for examinations already performed and complete supplemental reports which do not require an examination, but shall not perform new evaluation examinations as a QME or AME until the physician returns to active QME status. Subdivision 33(d) makes minor edits for clarity that the party with the legal right to select the QME may decide to waive his or her right to a replacement QME and wait for an appointment with the selected QME. Subdivision 33(e) is amended to provide that whenever a party with the legal right to schedule an examination with a QME is unable to obtain an appointment within 60 days of the request, the party may report the unavail-

ability of the QME to the Medical Director and obtain a replacement QME name. Subdivision 33(f) is amended to improve cross reference, by adding in the name of form 109, and to make other minor edits for clarity. Subdivision 33(g) is added to describe the procedure the Medical Director will use to notify a QME by certified letter when the Medical Director becomes aware of the QME's unavailability at a specific location and the QME is otherwise not responding to calls or mail at that location.

Section 34 is amended to allow a QME upon written request by the injured worker and for his or her convenience only to move the appointment to another QME office location listed with the Medical Unit. Subdivision 34(a) has been amended to apply to both unrepresented and represented cases and to allow the QME to serve the appointment notification form on the parties' attorneys in a represented case. Subdivision 34(b) is amended to add language allowing the injured worker, for his or her convenience, to make a written request to the QME to move the appointment to another office of that QME as long as that office location is certified with the Medical Unit of the DWC.

Section 35 is amended to add in subdivision 35(a)(4), a provision that whenever the medical treatment recommended by the treating physician is disputed, the evaluator must be provided with a copy of the treating physician's report recommending the treatment with all supporting documentation, a copy of the employer's decision, with any supporting documentation, to approve, deny, delay or modify the disputed treatment and all other relevant communications exchanged during the utilization review process. Also a new subdivision 35(b)(1) is added that provides all communications by the parties with the AME, or QME selected from the panel, shall be in writing and sent simultaneously to the opposing party when sent to the medical evaluator, except as otherwise provided in subdivisions (c) and (k) of this section. Subdivision 35(b)(2) requires the parties using an AME to agree on what information will be provided to the AME, as required by Labor Code section 4062.3(c). Subdivision 35(d) is added to provide that once an opposing party objects within 10 days to non–medical records or information proposed to be sent to the evaluator, the records of information shall not be provided to the evaluator unless so ordered by a Worker's Compensation Administrative Law Judge. Subdivision 35(e) is added to clarify that no party may forward any medical/legal report which was rejected as untimely pursuant to Labor Code section 4062.5, any evaluation report written by a physician other than the treating physician secondary physician or evaluator obtained pursuant to Labor Code sections 4060 through 4062.2, or which was otherwise stricken or found inadequate by a Workers' Compensation Administrative Law Judge.

A new subdivision 35(f) allows either party to use discovery to establish the accuracy or authenticity of non–medical records or information. Text is added in 35(k) to specify that the Appeals Board retains jurisdiction to determine whether ex parte contact in violation with Labor Code section 4062.3 or this section has occurred. A new subdivision 35(*l*) requires the evaluator to address all contested medical issues arising from injuries on one or more claim forms prior to the evaluation that are within the evaluator's scope of practice and areas of clinical competency, and otherwise to advise the party in writing at the earliest opportunity of any disputed medical issues outside the scope of the evaluator's scope of practice and area of clinical competence, so the parties may obtain an additional QME.

Section 35.5 is amended to refer to all relevant Labor Code sections by which an evaluator may complete a report. Subdivision 35.5(b) is added to require the reporting evaluator to state in the body of the report the date the examination was completed and the street address at which the evaluation examination was performed. If the evaluator signs the report on any date other than the date the examination was completed, the evaluator shall enter the date the report is signed next to or near the signature on the report. Subdivision 35.5(c) is added to require that any deposition of the evaluator be held at the location where the examination was performed and that the evaluator be available for a deposition within at least 120 days of the party's initial deposition request or notice. Subdivision 35.5(d) requires an AME or QME, when providing an opinion on a disputed medical treatment issue, to apply and be consistent with the standards of evidence–based medicine set out in the Medical Treatment Utilization Schedule (sections 9792.20 *et seq.* of Title 8 of the California Code of Regulations). In the event the disputed medical treatment, condition or injury is not addressed by the MTUS, the evaluator's medical opinion must be consistent with section 9792.20 *et seq.* of Title 8 of the California Code of Regulations, regarding other scientifically and evidence–based medical treatment guidelines, rating randomized controlled trials and rating the strength of the evidence.

Section 36 is amended with minor edits in subdivisions 36(a) and 36(b). Subdivision 36(c) is added to provide in cases of an unrepresented injured employee claiming an injury to the psyche which is disputed, the injured employee may voluntarily agree by completing QME Form 120 (§ 120 of Title 8) prior to or at the outset of a QME examination, to have a copy of the QME report served on a physician designated by the injured employee for the purpose of an office visit between the injured employee and the physician to review and discuss

the report. The employer shall be required to pay the designated physician for one office visit at the appropriate office visit rate for reviewing the report with the injured employee. New Subdivision 36(d) provides that a Qualified Medical Evaluator who has served a comprehensive medical legal report on an unrepresented injured worker, the claims administrator, or if none the employer, and the Disability Evaluation Unit, that addresses a disputed issue involving permanent impairment, permanent disability or apportionment, shall not issue any supplemental report on that issue, unless requested to do so by the Disability Evaluation Unit, by the Administrative Director in response to a petition for reconsideration of a disability rating or by a Workers' Compensation Administrative Law Judge.

Section 37 (Treating Physician's Determination of Medical Issues Form) is deleted as redundant and duplicative.

Section 38, Medical Legal Evaluation Time Frames and Extensions, is amended. Subdivisions 38(a) and (b) as currently worded are deleted. New subdivision 38(a) provides that the time frame for both initial and follow up comprehensive medical–legal evaluation reports is 30 days from the commencement of the evaluation, unless the evaluator requests and is granted an extension of time. Wording is added to provide that when the evaluator fails to issue the report within this timeframe and fails to obtain an extension of time from the Medical Director, either party may request a replacement QME under section 31.5 of Title 8 and neither party shall be liable for the cost of the late report. The wording also permits the QME to complete the report beyond the 30 day time limit only if both parties waive their right to a replacement QME. The wording explains the use of QME Form 113 (Notice of Denial of Request for Time Extension) and QME Form 116 (Notice of Late QME/AME Report — No Extension Requested). The new Subdivision 38(b) directs the evaluator to request an extension of time using QME form 112 (see section 112 of Title 8 of the California Code of Regulations), and provides that an extension of up to 30 days may be granted. As expressly stated in the Labor Code section 139.2(j)(1)(B), when the evaluator's reason for the extension request is for good cause as defined in that section, an extension of 15 days may be granted. New Subdivision 38(c) provides the evaluator must notify the Medical Director, the employee and the claims administrator not later than five days before the initial 30 day deadline to complete the report, of the request for an extension of time. New Subdivision 38(d) provides that the Medical Director will notify the parties of the decision to grant or deny the request on QME form 112. When the request is denied, the Medical Director will also send the parties QME form 113, found at section 113 of Title 8, to use in the event the parties wish to waive their right to a replacement QME and wait for the late report from the original QME. New Subdivision 38(e) provides that when the Medical Director becomes aware of a late report and the evaluator never requested an extension of time, the Medical Director will notify the parties by use of QME form 116 (section 116 of Title 8). The parties are able to complete part of form 116 and return it to the Medical Director to indicate whether the party wishes to accept the late report. Subdivision 38(h) is amended to provide that the time frame, of 60 days for completion of supplemental reports, applies to both unrepresented and represented cases. New Subdivision 38(j) provides that a party wishing to object to an evaluator's report for failure to complete the report within the time required under section 38 must file the objection with the Medical Director, along with a request for a replacement QME or QME panel pursuant to section 31.5 of Title 8, within fifteen (15) days of the date the evaluation report was due after the expiration of an approved extension, if any, or within 15 days of the date the Medical Director notifies the parties with QME Form 113 (Notice of Denial of Request for Time Extension) or QME Form 116 (Notice of Late QME/QME Report — No Extension Requested). This time limit for objections that could result in nonpayment for the late evaluation report, replacement of the evaluator and a new examination and evaluation report, is needed to implement the legislative intent in Labor Code section 139.2(j) and 4062.5, as amended by SB 899.

Section 39 is amended to change the title of the section and to improve syntax in the wording text.

Section 39.5 is amended to allow QMEs to comply with the record retention requirements of the section by retaining only an electronic copy of an employee evaluation report as long as the electronic copy is a true and correct copy of the original signed by the QME when it was served on the parties. Additional language requires the QME to return original medical records to the person who supplied the records or to the injured employee.

Article 4. Evaluation Procedures (§§ 40–47)

Section 40 (QME Disclosure Requirements) is amended so that it applies to both represented and unrepresented injured workers.

Section 41 (Ethical Requirements) is amended throughout to make minor corrections to grammar, syntax, punctuation and cross reference. Subdivision 41(a)(1) is amended to substitute 'physician' for 'medical' in referring to the office at which evaluations are performed. In addition, wording is added to specify the evaluator must maintain for such an office a 'functioning business office phone with the phone number listed with the Medical Director for that location'. Subdivision 41(a)(4) is added to positively state that a Qualified

Medical Evaluator must refrain from treating or soliciting to provide medical treatment, medical supplies or medical devices to the injured employee. Subdivision 41(a)(5) is added to positively state that a QME must communicate in a respectful, courteous and professional manner with the injured employee. Subdivision 41(a)(6) is added to clarify that a violation of section 41.5 of Title 8, involving a conflict of interest, is an ethical violation that will result in discipline of a QME. Subdivision 41(a)(7) is added to positively state that a QME may not re–schedule a panel evaluation examination 3 or more times in the same case. This section was added due to complaints of such a practice. Subdivision 41(a)(8) is added to prohibit panel QMEs from cancelling an evaluation exam less than 14 days from the exam date without good cause and without providing a new examination date within thirty calendar days of the date of cancellation. This section is added to avoid repeated delays due to examination rescheduling.

Subdivision 41(b) is amended to replace 'council' with 'Administrative Director', due to the amendments by SB 228 discussed above, and to make the section apply to QMEs selected from panels issued to both unrepresented employees and represented employees, due to the amendments by SB 899 discussed above.

Subdivision 41(c)(6) This subdivision is added to clarify that the date on the evaluator's report must be the same as the date the evaluator has signed and the report is being served on the parties. Subdivision 41(c)(7) is added to require the evaluator to actually write the portions of the report involving discussion of medical issues, medical research relied upon, medical determinations and medical conclusions, and to further require that when more than one evaluator signs a report, the report contain a clear description and disclosure of the portions of the report written by each signatory. Language is also added to require that an evaluator, who relies upon and incorporates by reference the entirety of the consulting report of a physician in another specialty, may do so only if the consulting physician has signed under penalty of perjury and in compliance with the attestations made under penalty of perjury required by Labor Code section 4628 regarding the preparation of the consulting report. Subdivision 41(d) is amended to state positively that no evaluator shall engage in any physical contact with the injured employee that is unnecessary to complete the examination. Subdivision 41(f) has been amended to apply to represented injured employees, as well as unrepresented employees.

Section 41.5 Conflicts of Interest by Qualified Medical Evaluator is a new section added pursuant to Labor Code § 139.2(o). New subdivision 41.5(a) states that an evaluator shall not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under the Labor Code. Subdivision 41.5(b) provides that a conflict with the duties of the evaluator for the purposes of section 139.2(o) means having and failing to disclose a disqualifying conflict of interest. Subdivision 41.5(c) lists the parties and entities with whom a disqualifying conflict of interest may exist, i.e. the parties, their attorneys, if any; primary or secondary treating physicians in the case if treatment is in dispute; the reviewing utilization review physician or utilization review organization if the UR decision is in dispute; and the surgical center if the need for the surgery is in dispute.

Subdivision 41.5(d) defines 'disqualifying conflict of interest' and lists the types of familial relationships, significant disqualifying financial interests, professional affiliations, and other relationships which would cause a person aware of the facts to reasonably entertain a doubt that the evaluator would be able to act with integrity and impartiality. Significant disqualifying financial interests include employment or a promise of employment; an interest of five % or more in the fair market value of any form of business involved in workers' compensation matters or of private real property or personal property or in a leasehold interest; five % or more of the evaluator's income is received from direct referrals by or from one or more contracts with a person or entity listed in 41.5(c), excluding MPN contracts; a financial interest as defined in Labor Code section 139.3 that would preclude a referral; a financial interest as defined under the Physician Ownership and Referral Act of 1993 (PORA) set out in Business and Professions Code sections 650.01 and 650.02 that would preclude referral. Professional affiliations include performing services in the same medical group or other business entity comprised of medical evaluators who specialize in workers' compensation medical — legal evaluations. Subdivision 41.5(d)(4) is any other relationship or interest not addressed above which would cause a person aware of the facts to reasonably entertain a doubt that the evaluator would be able to act with integrity and impartiality.

Subdivision 41.5(e) allows an AME or QME to disqualify himself or herself on the basis of a disqualifying conflict of interest as defined in subdivision 41.5 as well as whenever the evaluator has a relationship that causes the evaluator to decide it would be unethical to perform a comprehensive medical–legal evaluation examination or to write a report in the case. Subdivision 41.5(f) outlines how the evaluator is to give written notice to the parties. It also provides that whenever the evaluator declines to do the evaluation due to disqualifying himself or herself, the parties are entitled to a replacement QME or QME panel. If the evaluator notifies the parties of a disqualifying conflict but declines to disqualify himself or herself, the parties shall follow the proce-

dures in section 41.6 of Title 8 of the California Code of Regulations. If the injured employee is not represented by an attorney, the evaluator must fax a copy of the notice of conflict to the Medical Unit of the Division of Workers' Compensation at the same time it is sent to the parties.

Subdivision 41.5(g) requires each party who knows of or becomes aware of a potential disqualifying conflict of interest as defined in section 41.5 to notify the evaluator at the earliest opportunity and no later than five business days of becoming aware of the potential conflict, to enable the evaluator to determine whether a conflict exists. Notice of the alleged conflict must be served on the other party at the time the evaluator is notified.

New Section 41.6, Procedures after Notice of Conflict of Interest and Waivers of Conflicts of Interest of an Evaluator, is proposed. Subdivision 41.6(a) provides that whenever an AME or QME notifies the parties of a disqualifying conflict of interest, the parties must follow the procedures in this section. Subdivision 41.6(b) requires the evaluator to proceed with a scheduled evaluation unless the evaluator declines and disqualifies himself or herself under section 41.5 or any party is entitled to a replacement QME. Subdivision 41.6(c) provides that within five business days of receipt of the evaluator's notice of conflict, in a unrepresented case, the parties shall obtain a replacement. In a represented case, each party is required to notify the other and the evaluator whether the party objects to the evaluator on the grounds of the conflict or wishes to waive the conflict. To be valid, a represented party's waiver must be written on a page that states the nature of the conflict, that the party understands that the evaluator has a conflict and the nature of the conflict, and the party wishes to waive the opportunity to obtain another evaluator. Attorneys may sign such a waiver for their clients as long as the signed waiver is served on the party by the attorney. Subdivision 41.6(d) provides that any dispute over whether a conflict of interest may affect the integrity and impartiality of the evaluator with respect to an evaluation report or supplemental report, and any dispute over waiver under this section, shall be determined by a Workers' Compensation Administrative Law Judge.

New Section 41.7, Gifts to Medical Evaluators, is proposed. Subdivision 41.7(a) provides that no AME or QME shall accept gifts for a single source in a twelve month period that have a total fair market value in the aggregate of $ 360 or more. Single source is defined as a source that handles workers' compensation matters and includes but is not limited to one or more attorneys, physicians, employers, claims administrators, medical or health care or insurance or utilization review business entities. The section excludes reasonable and appropriate income earned a Medical Provider Network as defined in Labor Code sections 4616 *et seq.*, from a Health Care Organization as defined in Labor Code sections 4600.3 *et seq.*, from a Preferred Provider Organization or managed care organization as defined in Health and Safety Code sections 1340 *et seq.* for services performed as a treating physician, or reasonable and appropriate income paid for services performed as an AME or QME. Subdivision 41.7(b) defines the term 'gift' under this section to mean any payment to the extent that consideration of equal or greater value is not received. The definition also includes any rebate or discount in the price of anything of value unless the rebate or discount is also made in the regular course of business to members of the public, and any loan, forgiveness or other thing of value having a fair market value in excess of $ 360 in the aggregate. Subdivision 41.7(c) provides that any person who claims that a payment, rebate, discount, loan, forgiveness, or other thing of value is not a gift has the burden of proving that the consideration received is of equal or greater value.

Sections 43, 44, 45, 46, 46.1 and 47 are all sections that describe the methods for evaluating measuring disability arising from specific common industrial injuries. Each of these sections has been amended to identify those cases which must be evaluated and rated using the AMA Guides and permanent disability rating schedule adopted by the Administrative Director applying the AMA guide impairment criteria, and those cases that may be evaluated under the evaluation guidelines and permanent disability rating schedule as they existed before the effective date of SB 899.

Subdivision 43(b) is added to specify that for all claims having dates of injury on or after January 1, 2005, and for specified claims having a date of injury prior to January 1, 2005, the method for evaluating the psychiatric elements of impairment shall include describing the employee's symptoms, social, occupational and, if relevant, school functioning, and describing the rationale for the evaluator's assignment to a level of impairment as published in the Permanent Disability Rating Schedule adopted by the Administrative Director on or after January 2005 pursuant to section 9805 of Title 8 of the California Code of Regulations.

Article 4.5. Minimum Time Guidelines (§§ 49–49.9)

All of these sections describe the minimum amount of face to face time to be spent by an evaluator with an injured worker in the course of conducting a QME examination. Each section has been amended to require the QME to report 'the amount of face to face time actually spent with the injured worker' and to explain any

variance 'below the minimum amount of face to face time stated in this regulation.'

Article 5. QME Reappointment (§§ 50–57)

Section 50, Reappointment: Requirements and Application Form, has minor edits to correct cross reference, improve syntax and clarity. Subdivision 50(c)(3) is added to require the QME reappointment applicant to attest that the physician has accurately reported on the QME Form 104–SFI to the best of the QME's knowledge the information required by section 29 regarding the QME's specified financial interest that may affect the fairness of QME panels. Subdivision 50(c)(4) is added to require QME reappointment applicants to attest that the QME spends at least five (5) hours per week providing direct medical treatment, or other activity appropriate for the status of the reappointment applicant (e.g. AME or retired or faculty applicants), at each office location identified to the Medical Director as a "primary practice location" as set out in section 1(s) of Title 8 of the California Code of Regulations.

Section 51, Reappointment: Failure to Comply with Time Frames, has minor edits to improve cross reference, syntax and clarity.

Section 52, Reappointment: Unavailability Notification, has minor edits to improve cross reference, syntax and clarity.

Section 53, Reappointment: Failure of Board Certification Examination, is being deleted because the amendments to Labor Code § 139.2 by AB 776 [Stats. 200, ch. 54 (AB 776)], repealed the wording that addressed this issue.

Section 54, Reappointment: Evaluations Rejected by Appeals Board, has minor edits to improve cross reference, syntax and clarity.

Section 55, Reappointment: Continuing Education Programs, has minor edits to improve cross reference, syntax and clarity. In addition, subdivision 55(c)(4) is added to require the education provider of a continuing education course that is seeking accreditation to submit an outline of course content, or actual course content, consistent with the topics in section 11.5(c) of Title 8 of the California Code of Regulations. Subdivision 55(*l*) is amended to add the phrase 'held by faculty'. This amendment simply improves syntax in the subdivision.

Section 56, Reappointment: Failure to Comply with WCAB Order or Ruling, has minor edits to improve cross reference, syntax and clarity.

Section 57, Reappointment: Professional Standard — Violation of Business and Professions Code § 730, has been amended to provide that the Administrative Director may deny appointment or reappointment to any physician who performed a QME evaluation without holding QME certification at the time of examining the injured employee or the time of signing the initial or followup evaluation report because, by definition, each of these requires a physical examination.

Article 6. QME Discipline (§§ 60–65)

Section 60, Discipline, has minor edits to improve cross reference, syntax and clarity. In addition, subdivision 60(b)(9) is added to provide that failure to disclose a disqualifying conflict of interest as required by section 41.5 of Title 8 of the California Code of Regulations is a violation that could, after hearing, result in disciplinary action. Subdivision 60(b)(10) is added to provide that failure to disclose a significant financial interest that may affect the fairness of a QME panel, as defined in section 1(dd) of Title 8 of the California Code of Regulations, is a violation that could, after hearing, result in disciplinary action. Subdivision 60(d) is added to expressly delegate from the Administrative Director to the Medical Director, or designated Associate Medical Director, the powers and discretion to conduct investigations, assign investigators, issue subpoenas, propound interrogatories, receive and file requests for hearing and notices of defense, set and calendar cases for hearing, issue notices of hearing, assign counsel and perform all other functions related to QME discipline except for issuing statements of issues, accusations or disciplinary orders after hearing which is reserved to the authority of the Administrative Director.

Section 61, Hearing Procedure, has minor edits to improve cross reference, syntax and clarity.

Section 62, Probation, has minor edits to improve cross reference, syntax and clarity.

Section 63, Denial of Appointment or Reappointment, is added as a new section. Subdivision 63(a) provides whenever the Administrative Director determines that an application for appointment or reappointment as a QME will be denied, the AD shall notify the applicant in writing of the reasons and the decision to deny the application and provide notice that if the applicant submits a specific written response to the notice of denial within 30 days, the AD will review the decision and within 60 days of receipt of the response notify the applicant of a final decision. Subdivision 63(b) provides that if the applicant fails to respond to the notice of denial within 30 days, the decision to deny shall become final. Subdivision 63(c) provides that after the Administrative Director determines the final decision, it will be issued in the form of a statement of issues and notice of the right to a hearing. Subdivision 63(d) provides that notices and responses must be made by certified mail.

Section 65, Sanction Guidelines, has a number of corrections to numbering, lettering, capitalization, cross reference citations, use of italics and bold lettering, and to delete references to the IMC and insert references to the Administrative Director. New text has been

added to the section entitled "B. Violations of Material Statutory/Administrative Duties Which May Result in Alternative Sanctions", as follows:

6. (Soliciting or Providing Treatment in the Course of a QME Evaluation): Reference to 8 Cal. Codes Regs. § 41(a)(4) have been added;

7. (Self Interested Referral): References to Labor Code § 139.2(o) and 8 Cal. Codes Regs. § 41.5 have been added;

8. (Ex Parte Communication): Reference to 8 Cal. Code Regs. § 41(b) is added.

9. (Violations of QME Ethical and/or other Regulations): Reference to 8 Cal. Codes Regs. § 41(f) is added. In addition, the list of conduct under this category includes added statements of 'Failure to timely notify the parties of a disqualifying conflict of interest (8 Cal. Code Regs. § 41.5)' and 'Failure to report specified financial interests that may affect the fairness of QME panels (8 Cal. Code Regs. §§ 1(dd) and 29).'

Article 7. Practice Parameters for the Treatment of Common Industrial Injuries (§§ 70–77)

These sections are deleted in their entirety due to repeal of Labor Code § 139 by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)] and by expressly repealing, in section 50 of SB 228, all of the treatment guidelines that had been adopted under section 139. However, the Article is being reserved for future rulemaking.

Article 10. QME Application Forms (§§ 100–104) and Article 10.5. QME Process Forms (§§ 105–124)

All of the existing forms have been edited; Forms 105 and 106 are changed significantly, Forms 113, 114 and 115 are being deleted and three new forms are being added: QME Form 120 (Voluntary Directive for Alternate Service of Medical–Legal Evaluation Report on Disputed Injury to Psyche), Form 123 (QME/AME Conflict of Interest Disclosure and Objection or Waiver by Represented Parties Form) and Form 124 (Specified Financial Interest Attachment to QME Forms 100, 103 or 104 ["SFI Attachment Form"]).

In addition, the following text is being added to each section from 100 through 124 for publication in Title 8 of the California Code of Regulations under the number and title of each form: "NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1–800–794–6900."

The agency name, address, phone and fax number has been corrected on all forms. In addition, to simplify the rulemaking process regarding the changes in the forms, the text of all existing forms is being shown in strikeout and **all of the text in the proposed changed version or new form is shown in a camera ready format without underlining or strikeout to show where text changes to the existing forms have been made.** However, a summary of those changes to existing form language follows:

Changes made within the text of the Form 100 (QME Application Form) itself: Throughout the form, all references to the 'council' have been deleted and the words 'Administrative Director' have been inserted, due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. SB 228 transferred the authority in Labor Code section 139.2 for regulating QMEs to the Administrative Director of the Division of Workers' Compensation. Also, the revision date on the bottom of each page has been updated. Additional changes are:

Page 1, heading: The address of the agency has been updated to the current address.

Page 1, Block 1: The requested phone number is now labeled as 'business phone'. Also a new box for business e–mail has been added to the form. Completing this box is optional.

Page 1, Block 2: The reference to boxes on the form to be completed by PhD's, Psy. D's and Ed.D's has been corrected by adding '10' to the list of boxes.

Page 2, Block 4: The reference to 'IDE' has been changed to 'Industrial Disability Evaluation' for clarity and the words 'eff. 4/15/99' are deleted as unnecessary. These changes do not change the existing requirements.

Page 2, Box 5, line 1: ', Inc.' are deleted as unnecessary.

Page 3, Block 8: the words 'College of' are deleted and replaced by the word 'Council on' to correct the name of the accreditation body reference.

Also, the line requiring doctors of chiropractic to submit a copy of the certificate received from a postgraduate specialty diplomate program is deleted in its entirety. As discussed below under 5 (QME Specialty Code List), the list of specialty codes for chiropractors is being deleted so there is no need for copies of these certificates to support the designation selected in box 8 by a doctor of chiropractic.

Page 3, block in the middle of the page: The words 'College of' are deleted and replaced by 'Council on', to correct the name of the accreditation body.

Page 4, Item C: Additional text is added: I declare I spend five or more hours per week in direct medical treatment (or, for applicants under the AME, retired, or faculty status, in other specified activity) at each location I have listed as a "primary practice" location. I have accurately and fully reported all specified financial interest that may affect the fairness of QME panels, as required on the attached QME SFI Form 124.

Page 5: a new item 2.g. is added in the instructions: g) A completed, signed QME SFI Form 124. (QME Disclosure of Specified Financial Interests That May Affect the Fairness of QME Panels.) This document must

be submitted prior to obtaining your appointment as a QME.

Page 6: List of QME Specialty Codes (for use with the QME Application Form): The following QME specialty codes have been deleted:

MRS (Colon & Rectal Surgery) because no physicians were certified as QMEs in this specialty.

MNM (Nuclear Medicine) because no physicians were certified as QMEs in this specialty.

MOQ (Medicine Otherwise Qualified) because no physicians were certified as QMEs in this specialty.

The following QME specialty codes were merged into another specialty code because too few QMEs were listed in the specialty to randomly select a three name QME panel in some areas of the state, as required by Labor Code section 139.2(h). The wording of the specialty codes created by such merging are stated as they appear on the QME panel request forms used by injured employees or claims adjusters:

MAA (Anesthesiology) is deleted and the QMEs listed in this specialty code will be merged into a new code of MPA (Pain Medicine and Anesthesiology).

OFP (Family Practice — DO) is deleted and the QMEs listed in this specialty code will be merged into MFP (Family Practice).

OFM (Family Practice — DO including Osteopathic manipulation) is deleted and the QMEs listed in this specialty code will be merged into MFP (Family Practice).

MHH (Hand — Orthopaedic Surgery, Surgery and Plastic Surgery) is added.

MOH (Hand — Orthopaedic Surgery) is deleted and the QMEs listed in this specialty code will be merged into a new code MHH (Hand — Orthopaedic Surgery, Surgery and Plastic Surgery).

MPH (Hand — Plastic Surgery) is deleted and the QMEs listed in this specialty code will be merged into a new code MHH (Hand — Orthopaedic Surgery, Surgery and Plastic Surgery).

MSH (Hand — Surgery) is deleted and the QMEs listed in this specialty code will be merged into a new code MHH (Hand — Orthopaedic Surgery, Surgery and Plastic Surgery).

MNB (Spine — Orthopaedic and Neurological Surgery) is added.

MOB (Orthopaedic Surgery — Including Back) is deleted and the QMEs listed in this specialty code will be merged into a new code MNB (Spine — Orthopaedic and Neurological Surgery).

MPB (Neurological Surgery — Including Back) is deleted and the QMEs listed in this specialty code will be merged into a new code MNB (Spine — Orthopaedic and Neurological Surgery)

MAP (Pain Management — Anesthesiology) is deleted but the QMEs listed in this specialty code will be merged into a new code MPA (Pain Medicine and Anesthesiology).

MPA (Pain Medicine and Anesthesiology) is added.

MMO is added for (Internal Medicine — Oncology), (Orthopedic Surgery — Oncology) and (Radiology — Oncology).

MPP (Pain Management — Pain Medicine) is deleted but the QMEs listed in this specialty code will be merged into a new code MPA (Pain Medicine and Anesthesiology).

MPT (Toxicology — Occupational Medicine) is deleted but the QMEs listed in this specialty code will be merged into a new code MTT (Toxicology — Occupational Medicine and Emergency Medicine).

MET (Toxicology — Emergency Medicine) is deleted but the QMEs listed in this specialty code will be merged into a new code MTT (Toxicology — Occupational Medicine and Emergency Medicine).

MRY (Radiology) is deleted but the two QMEs listed in this specialty code will be merged into the existing code MMO (Oncology).

The following QME specialty code designations were deleted and the QMEs listed in these specialty codes will be merged into the existing code of DCH (Chiropractic). This change is made because the Administrative Director recognizes only those specialties in a California licensed health profession that are recognized by the physician's licensing board. The Board of Chiropractic Examiners does not recognize any specialties or subspecialties among licensed doctors of chiropractic:

DCN (Chiropractic — Neurology)
DCO (Chiropractic — Orthopaedic)
DCR (Chiropractic — Radiology)
DCS (Chiropractic — Sports Medicine)
DCT (Chiropractic — Rehabilitation)

Section 101, The Alien Application Form, and the attached directions, are being deleted entirely, since as a condition of appointment as a Qualified Medical Evaluator each applicant must be licensed by a professional licensing agency of the State of California. The determination regarding the individual's citizenship and immigration status will already have been made by the professional licensing body.

Section 102 (The Application for QME Competency Examination Form). The following changes are incorporated into the new form 102:

The street address is corrected to show the Exam Unit's location on the 18th floor at 1515 Clay Street in Oakland.

The applicant physician is asked to provide a business email address on the form, although providing this information is optional. This will improve the means of communications with applicants in the event registra-

tion forms or materials are missing from their application packet.

The following changes are incorporated into the new form 103 (QME Fee Assessment Form):

The Medical Unit's address, phone and fax number are corrected on the letterhead.

Throughout the form, all references to the 'Industrial Medical Council' or 'council' have been deleted and the words 'Administrative Director' have been inserted, due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which eliminated the Industrial Medical Council and transferred the authority in Labor Code section 139.2 to regulate Qualified Medical Evaluators to the Administrative Director. SB 228 transferred the authority in Labor Code section 139.2 for regulating QMEs to the Administrative Director of the Division of Workers' Compensation. The phrase 'and Independent Medical Evaluator' is deleted throughout the form, because this designation of forensic evaluator is no longer used in the California workers' compensation system.

In addition, minor edits are made throughout the form to correct cross references, syntax, grammar and punctuation.

New text is added to the bottom of page 1 that states: PRIMARY PRACTICE LOCATIONS; QMEs may designate only up to four (4) "primary practice" locations. A "primary practice" location is an office at which the QME spends at least five (5) or more hours per week engaged in direct medical treatment. QMEs appointed on the basis of AMEs performed or as qualified retired or faculty must perform the other activity specified in section 1(x) of Title 8 of the California Code of Regulations (8 Cal. Code Regs. §§ 1(x), 17.) Misrepresentations of the number of evaluations performed, of the "primary practice" locations or of the number of additional locations shall constitute grounds for disciplinary proceedings (8 Cal. Code Regs. § 60).

The form identifier on page two and the form revision date are corrected. Also, new text is added so locations designated as primary practice locations are listed separately from other QME locations not primary practice locations, and the definition of primary practice locations is provided at the bottom of the page.

Changes made to the text of the Form 104 (Reappointment Application) itself:

Page 1: At the top of the form, the agency name and address are corrected. Throughout the form, all references to the 'Industrial Medical Council' or 'council' have been deleted and the words 'Administrative Director' have been inserted, due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which eliminated the Industrial Medical Council and transferred the authority in Labor Code section 139.2 to regulate Qualified Medical Evaluators to the Administrative Director. SB 228 transferred the authority in Labor Code section 139.2 for regulating QMEs to the Administrative Director of the Division of Workers' Compensation. In addition, the form identifier and revision date are corrected at the bottom of each page of the form.

Page 1, Block 1: A box for 'Business Email Address' is added and is optional. Other minor word substitutions are made to the boxes for phone number and license number. The requested business email address is to ease communication between the applicant and the Medical Unit staff who process the reappointment applications.

Page 1, Block 2: The word 'council' is deleted and replaced with 'Administrative Director'. This is due to elimination of the IMC or council and transfer of its authority to regulate QMEs to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

Page 2, Block 3, item 5. Minor edits are made to correct the cross reference to the Government Code and to correct grammar in the paragraph.

Page 3, Block 5: The word 'IMC' is deleted and replaced with 'Administrative Director'. This is due to elimination of the IMC or council and transfer of its authority to regulate QMEs to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. New wording is added to paragraph C: I have accurately and fully reported all specified financial interest that may affect the fairness of QME panels, as required on the attached QME SFI Form 124. I declare I spend five or more hours per week in direct medical treatment (or, for QMEs appointed under the AME, retired or faculty status, in other specified activity) at each location I have listed as a "primary practice" location.

Page 4: The word 'IMC' is deleted and replaced with 'Administrative Director'. This is due to elimination of the IMC or council and transfer of its authority to regulate QMEs to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition, the Medical Unit's address, phone, fax number and email address are corrected.

Also, the amount charged by the agency per page for copies of public documents is reduced to $ .10 per page, consistent with Division policy.

Page 5 List of QME Specialty Codes for the applicant QME to use to designate the areas of specialty to be listed for reappointment.

This list has been modified in exactly the same way as described for QME Form 100 above.

QME Form 105 (Request for QME Panel under Labor Code § 4062.1 — Unrepresented and Attachment to Form 105 (How to Request a QME Panel when you do not have an Attorney): The entire text of existing form

105 is being stricken and the function of this form is being changed. The form, as proposed, will be used by parties in an unrepresented case to request a panel of Qualified Medical Evaluators. Form 105 must be provided to the unrepresented injured worker with the attachment to Form 105 which explains how the form is to be completed and discusses other topics about what happens after the panel is issued.

The Request Date is needed to determine whether the employer/insurer who requests a panel in an unrepresented case has complied with the pre–condition in Labor Code § 4062.1(b) that 10 days must have passed since the time the employer furnished the form to the injured employee with a request to the employee to complete and file the form.

Party Requesting the Panel is needed to know which pre–conditions apply to processing the form and who to contact if additional information is needed.

Checking a box to indicate the dispute giving rise to the request for a panel is needed because different supporting evidence is needed for each type of dispute before a panel can be issued.

Employee Information and Employer/Insurer or Claims Administrator information is needed in order to send out the panel to the employee and to notify the employer, insurer or claims administrator that a panel was issued. Under Employee Information, a line is added for the name of the employee's representative, if any, such as a union representative, paralegal or other person assisting the injured employee with the workers' compensation claim.

The Medical Specialty Requested is needed to select QMEs within the specialty.

The list of QME Specialty Codes on page 2 of the form lists the specialties available by code. It is the same as the list on the QME Application Form (QME Form 100) and QME Reappointment Application (QME Form 104), except that each code on this form is listed alphabetically and only once. (See discussion above for QME Form 100 regarding changes in the specialty code list.)

The Attachment to Form 105 (How to Request a QME if You Do Not Have an Attorney) provides information to assist an unrepresented injured employee to complete Form 105 and to explain how the request is processed.

QME Form 106 (The Request for Qualified Medical Evaluator Panel — Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case)): The entire text of existing form 106 is being deleted and the function of this form is being changed. The new proposed QME Form 106 will be used by parties in a represented case to request a QME panel pursuant to Labor Code § 4062.2, after the parties have proposed one or more physicians to be an Agreed Medical Evaluator, but failed to agree on an AME. The Attachment to Form 106 provides information to assist a party to complete Form 106 and to explain how the request is processed.

Information requested on the form itself:

Request Date is needed to determine whether the party who requests a panel in a represented case has complied with the pre–condition in Labor Code § 4062.2 to send a written proposal to the opposing party with the name of one or more physicians to serve as Agreed Medical Evaluator at least 10 days prior to applying for a QME panel.

Party Making Request is needed to know which pre–conditions apply to processing the form and who to contact if additional information is needed.

Checking box to indicate the dispute giving rise to the request for a panel is needed because different supporting evidence is needed for each type of dispute before a panel can be issued.

Employee Information and Employer/Insurer or Claims Administrator information is needed in order to send out the panel to the employee and to notify the employer, insurer or claims administrator that a panel was issued.

Attorney name, address, phone and fax number information is also requested, in order that the parties' attorneys, respectively, may be contacted in the event additional information is needed.

The Medical Specialty Requested is needed to select QMEs within the specialty.

The Treating Physician's Specialty and the Specialty Preferred by the other party (if known) are requested pursuant to Labor Code § 4062.2(b), which requires the requesting party to supply such information.

The list of QME Specialty Codes on page 2 of the form lists the specialties available by code. It is the same as the list on the QME Application Form (QME Form 100) and QME Reappointment Application (QME Form 104), except that each code on this form is listed only once. (See discussion above for QME Form 100 regarding changes in the specialty code list.)

The Attachment to Form 106 (How to Request a QME in a Represented Case) provides information to assist a party to complete Form 106 and to explain how the request is processed.

Changes made to the proposed version of QME Form 107 (The Qualified Medical Evaluator Panel Selection Form): The agency's name, address, and phone numbers have been corrected. Under the Injured Worker Information and Panel number, the Date the panel request was received and the date the form was mailed, will be shown, since these dates each trigger time periods under the Labor Code. In addition, the name of the employer

is shown to help Medical Unit staff and the regulated public, identify the parties in the case, the insurance adjuster or agency is requested instead of the claims administrator and who requested the panel is identified.

Above the list of QMEs selected for the panel, the type of exam is identified, based on the information provided by the party requesting a panel.

The form identifier and revision date are corrected.

Changes in the text of form 108 (The Qualified Medical Evaluator Panel Selection Instruction Form):

The agency's name, address, phone and fax number are corrected.

Paragraph 1: The ten day time limit for selecting a QME from the panel list is added, consistent with the wording of Labor Code section 4062.1(b). Additional information is added to the paragraph to provide phone numbers and internet addresses. Pursuant to section 31.5 of Title 8 of the California Code of Regulations, when the employee's treating physician's name appears on the QME panel list, that is a ground for obtaining a replacement QME. The function of the QME in Labor Code sections 4060 through 4062.2 is to provide a medical opinion about a disputed opinion of the treating physician so the treating physician cannot also be the QME for the case.

Paragraph 2: The ten day limit is added, consistent with Labor Code section 4062.1(b).

Paragraph 3: The ten day limit is added, consistent with Labor Code section 4062.1(b).

Paragraph 4: Minor edits to the language were made, consistent with Labor Code § 4062.3.

Paragraph 5: This text was added regarding ex parte communications proscribed by Labor Code § 4062.3.

Paragraph 6: The text was edited for clarity to explain the expenses to be paid by the employer, consistent with Labor Code §§ 4062.1 and 4620–4625.

Paragraph 7: This text was in paragraph 5 of the existing form and is consistent with Labor Code § 139.2(h)(1).

Paragraph 8: This text was in paragraph 6 of the existing form and is consistent with QME obligations in §§11(d) and 65.B.6 of Title 8 of the California Code of Regulations.

Paragraph 9: This text was in paragraph 8 of the existing form and is consistent with Labor Code § 139.2(j) and § 38 of Title 8.

Paragraph 10: This text was in paragraph 5 of the existing form but has been corrected to reflect the current text names and web addresses.

Other text changed on QME form 109 (The Qualified Medical Evaluator Notice of Unavailability Form):

The agency name, address, phone and fax number are corrected.

The wording has been corrected to show that the maximum time allowed for unavailable status is 90 days in a fee period.

A fuller explanation of the activities a QME on unavailable status may perform is provided in the paragraph under the QME's signature.

Text is added stating: To complete this application, attach a list of all QME and AME examinations scheduled for the period of unavailability. For each case, state whether the exam is being rescheduled or whether you plan to complete the exam and report during the period of unavailability.

The form name and revision date are corrected.

Changes made to the proposed version of QME Form 110 (Appointment Notification Form):

The agency name, address, phone and fax number have been corrected.

References on the form to the 'Industrial Medical Council' have been deleted and the words 'Administrative Director' have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

Changes made to the proposed version of QME Form 111 (The Qualified or Agreed Medical Evaluator Findings Summary Form):

The agency name, address and phone number have been corrected.

The evaluator no longer will be asked to write the page numbers in the report for specific information.

The order of questions 13.a. and 13.b. on the form were reversed.

The text of 13.b. was reworded and new items were added as 16 and 17, to conform with the amendments to Labor Code § 4660 made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004], which now requires permanent impairment to be evaluated and reported consistent with the AMA guides.

Text providing for a declaration of service by mail or delivery by courier was added to the form for ease of completion by the evaluator's office staff.

On the Instructions page, references on the form to the 'Industrial Medical Council' have been deleted and the words 'Administrative Director' have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004. Also a paragraph explaining the declaration of service on the form has been added.

Changes made to the proposed version of QME Form 112 (The QME/AME Time Frame Extension Request Form):

As amended, this form will now be used by the Medical Unit to advise the QME and the parties of the decision to approve or deny the request for an extension of time for completing the QME report. Also, the order of information provided and to be completed on the form has been reorganized. References to 'Industrial Medical Council' have been deleted and the words 'Administrative Director' have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

Changes made to the proposed version of QME Form 113 (Notice of Denial of Request for Time Extension). :

The new text advises the parties that the request for an extension of time to complete the AME or QME report has been denied. It will be sent by the Medical Unit to the evaluator and both parties. New lines are added to be completed by each party to indicate whether the party wishes to waive the right to a new QME or AME report and accept the late report instead. Each party would complete the form and return it to the Medical Unit. This form and process is needed pursuant to the procedures specified in Labor Code § 4062.5, which provide that when a QME or AME report is late, neither party will be liable for payment for the late report unless both parties waive the right to a new evaluation report and elect to accept the late report.

QME Form 114 (The Denial of Time Extension Form) is being deleted in its entirety.

QME Form 115 (Notice of Late Qualified Medical Evaluator Report Form) is being deleted in its entirety.

Changes made to the proposed version of QME Form 116 (Notice of Late QME/QME Report — No Extension Requested Form):

New lines are added to be completed by each party to indicate whether the party wishes to waive the right to a new QME or AME report and accept the late report instead. Each party would complete the form and return it to the Medical Unit. This form and process is needed pursuant to the procedures specified in Labor Code § 4062.5, which provide that when a QME or AME report is late, neither party will be liable for payment for the late report unless both parties waive the right to a new evaluation report and elect to accept the late report.

Changes made to the proposed version of QME Form 117 (Qualified Medical Evaluator Course Evaluation Form):

The pre–printed p.o. box address, to return the form to has changed. Also the agency name has been corrected and reference to the Industrial Medical Council have been deleted and replaced with references to the Administrative Director.

Changes made to the proposed version of QME Form 118 (Application for Accreditation or Re–Accreditation as Education Provider):

Page 1: a box is added for those applying for re–accreditation to enter their education provider number, issued by the Medical Unit.

Page 4, Last paragraph: A sentence is added stating that the applicant may submit the course syllabus and handouts on a CD in lieu of hard copies, for the Medical Unit's review.

Changes made to the proposed version of QME Form 119 (Faculty Disclosure of Commercial Interest):

The agency name, address, phone and fax number were corrected.

References to 'Industrial Medical Council' have been deleted and the words 'Administrative Director' have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

New QME Form 120 (Voluntary Directive for Alternate Service of Medical–Legal Evaluation Report on Disputed Injury to Psyche):

This is a new form to be provided by a QME to an unrepresented injured employee who is being evaluated for a disputed injury to the psyche. By completing the form, which is voluntary, the injured employee is directing the evaluator to serve the evaluator's report on a physician designated by the injured employee, such as the treating physician, at the same time it is being served on the parties. The Medical Unit has received numerous requests from evaluators in disputed psyche cases for a waiver from the requirement in Labor Code § 4062.3(i) to serve the evaluation report directly on the injured employee as a party in the case. Such physicians have expressed concern that the discussion of the employee's condition may be misunderstood or cause an adverse psychological reaction if interpreted only by the employee, without the assistance of his or her physician to explain the interpretation. As provided in proposed regulation § 36(c) of Title 8 of the California Code of Regulations, when the unrepresented injured employee elects such alternate service the employer or claims administrator shall be responsible to pay for one treatment visit to the designated physician for reviewing and explaining the report to the employee.

The form asks for identifying information about the case (injured employee name, date of injury, claim number, WCAB case number, employer/insurer, name of QME, date of evaluation exam). The employee will print his or her name on a line that is part of a statement saying the employee understands he or she has a right to

be served with the medical–legal report to be done by the QME, that by signing the form he or she is giving direction on who the QME report may be served on, that it is being signed voluntarily, and that the options include sending a copy to the injured employee's home address and to the physician designated by the injured worker who will be paid for an office visit by the employer for the purpose of reviewing the report with the injured employee, or only sending a copy to the injured employee.

New QME Form 123 (QME/AME Conflict of Interest Disclosure and Objection or Waiver by Represented Parties Form)

This new form will be used by evaluators to notify parties of a conflict of interest, as defined in section 41.5 of Title 8 of the California Code of Regulations, with one of the parties or entities involved in a specific case.

The form asks for identifying information (QME/AME name; injured employee name; employer/insurer/TPA; Claim number; WCAB Case number (if known); QME Panel number (if applicable); and date scheduled for medical/legal examination.

The evaluator must check the applicable box. One choice states: I, the undersigned evaluator, have determined I have a disqualifying conflict of interest as defined in section 41.5 of the QME regulations (8 Cal. Code Regs.) in this case. The evaluator states the name of the person/entity with whom conflict exists and checks one or more categories of conflicts (familial; professional; significant financial; or other and describes the nature of the conflict). The other choice states: I have reviewed the information sent by (blank line for entering name of sender). I do not believe that any disqualifying conflict of interest, as defined in 8 Cal. Code Regs. § 41.5, exists.

The evaluator signs under a declaration under penalty of perjury, enters the date, and print his or her name.

At the bottom of the form, parties in a represented case are given choices to check. One choice states: I wish to object to the evaluator due to the conflict. The other choice states: I wish to waive the conflict and continue using the QME/AME in this case in spite of this conflict.

The party signs, dates and prints his or her name, and if the form is signed by a party's attorney, the attorney must also enter the name of the party.

The back of the form contains instructions.

The evaluator is advised of the duty to disclose disqualifying conflicts of interest to the parties in writing within five business days of becoming aware of the conflict. If the injured employee is not represented, the evaluator is instructed to fax the completed form to the Medical Unit at 510–622–3467. The evaluator is also advised that upon notice from any party that the party believes the evaluator has a disqualifying conflict of interest, the evaluator must review the information submitted and advise the parties within five (5) business days of receipt of the notice whether a conflict exists. The evaluator is instructed to use the form to disclose any conflict or to indicate no conflict exists.

A text box on the form summarizes the definitions from section 41.5 of the persons and entities with whom a conflict may exist and the categories of familial relationships, significant financial interests, professional affiliations, and other relationships that must be disclosed under section 41.5.

Parties in a represented case are instructed that within five business days of receiving a notice of conflict on QME Form 123 from an evaluator, each party must complete the bottom portion of the form to indicate whether the party objects to the evaluator or wishes to waive the disclosed conflict. The represented parties are instructed to serve the form on the evaluator and the opposing party. A party objecting to the evaluator is instructed to mail the form to the Medical Unit with a request for a replacement QME.

In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

"NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1–800–794–6900."

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

New QME SFI Form 124 (Specified Financial Interest Attachment to QME Forms 100, 103 or 104 ("SFI Attachment Form")). In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

Any physician who files a QME Form 100 (Application for Appointment), 103 (QME Fee Assessment Form) or 104 (Reappointment Application) with the Administrative Director also shall complete the Specified Financial Interest Attachment form, in order to disclose specified financial interest that may affect the fairness of QME panels, and append it to the form 100, 103 or 104 being submitted when the form is filed.

"NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1–800–794–6900."

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

This form requires a physician to disclose specified financial interests, as defined in subdivision 1(x) of Title 8 of the California Code of Regulations, that the Administrative Director has determined may affect the fairness of QME panels is two or more QMEs with such shared financial interests are assigned to the same QME

panel. To the extent feasible, the Administrative Director will use the information disclosed to avoid assigning two or more QMEs with such shared financial interests to the same panel list when it is issued to parties in a given case.

The form requires the QME to enter in designated boxes: identifying information (name, professional license number, business address, business telephone number, fax number, QME number, if applicable); partnership interests (name of business entity in which have limited or full partnership interest, address of business entity, names of partners who are physicians); interests of 5% or more in medical practice, medical group or other medical or medical/legal business entity in California workers' compensation system (name of medical practice/group/business entity; address of business entity; names of participating physicians); receipt of 5% or more of profits from medical practice, medical group or other medical or medical/legal business entity in California workers' compensation system (name of medical practice/group/business entity; address of business entity; names of participating physicians). The QME declares under penalty of perjury that the foregoing information is current, complete and accurate to the best of my knowledge.

Article 15. Fraudulent or Misleading Advertising (§§ 150–159)

Section 150(a) is added to provide a definition for 'Administrative Director'. SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)] repealed section 139 of the Labor Code, thereby eliminating the Industrial Medical Council, and transferred the authority to regulate Qualified Medical Evaluators under Labor Code 139.2 to the Administrative Director of the Division of Workers' Compensation.

Section 150(b) is deleted due to the elimination of by Industrial Medical Council by SB 228.

Sections 151–152: Minor edits are made to delete the words 'Council' and to insert the words 'Administrative Director' in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition the address of the Medical Unit, where complaint may be filed, is corrected.

Section 153: Minor edits are made to delete the words 'Council' and to insert the words 'Administrative Director' in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition the address of the Medical Unit, where complaint may be filed, is corrected.

Also, subdivision 153(b) is amended to clarify that a physician who is currently or was previously certified as a QME may state this fact in advertising copy, a curriculum vitae or descriptive text only for the period of time that is true and correct. Subdivision 153(e) is amended to clarify that only individual physicians who are currently certified as a QME may use that designation or the phrase "Qualified Medical Evaluator" in advertising copy. Subdivision 153(f) is amended to clarify that no physician subject to these regulations shall use the phrases "Qualified Medical Examiner", "Agreed Medical Evaluator", "Agreed Medical Examiner", "Independent Medical Examiner", "Independent Medical Evaluator" or "AME" as part of a firm name, trade name or fictitious business name in advertising copy. Subdivision 153(h) is added to prohibit any advertising copy which states or implies that the physician is currently an "Agreed Medical Examiner" or "Independent Medical Examiner" in the California workers' compensation system.

Section 154: Minor edits are made to delete the words 'Council' and to insert the words 'Administrative Director' in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition the address of the Medical Unit, where complaint may be filed, is corrected.

Also, subdivision 154(a)(4) is amended to provide that a physician who is not currently certified by the Administrative Director as a QME may in a curriculum vitae or descriptive text state any periods in the past during which the physician was certified as a QME.

Sections 155–156: Minor edits are made to delete the words 'Council' and to insert the words 'Administrative Director' in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

Section 157 is amended to provide if the Medical Director, after reviewing a physician's advertising copy, determines the advertising violates Business and Professions Code § 650 or these regulations and that the physician is currently a Qualified Medical Evaluator, the disciplinary and hearing procedures set forth in section 60 through 65 of Title 8 shall apply and that the Medical Director shall forward a copy of any final decision of such a violation to the physician's licensing board for such proceedings as that board may deem proper. Existing wording of subdivisions 157(c) through 157(d)(6) are deleted.

Section 158: Minor edits are made to delete the words 'Council' and to insert the words 'Administrative Director' in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB

228)(Alarcon)]. In addition the address of the Medical Unit, where complaint may be filed, is corrected.

Section 159: Only the citations to Authority and Reference notations have been corrected.

DISCLOSURES REGARDING THIS PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- **Determination regarding whether this rulemaking imposes a Local Mandate:**

  None is imposed by these proposed regulations because no new program or higher level of service to the public is required. The regulations provide technical detail on procedures used to regulate Qualified Medical Evaluators ('QMEs') and the procedures for obtaining reports from QMEs, and impose the same requirements on all employers in California. Local government and districts as employers, like all other employers in California, are already required by law to have workers' compensation coverage, or otherwise to self administer or contract for another entity to administer the workers' compensation claims of their employees and to conform to the Labor Code in using the medical dispute resolution procedures involving QMEs and AMEs.
- **Significant statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** None.
- **Effect on Housing Costs**: None
- **Cost Impacts Incurred By Private Persons or Businesses**: The Administrative Director has determined that the proposed regulations will not have any significant cost impact on private persons or businesses.
- **Other impacts on Jobs and Businesses**: The Administrative Director has determined that the changes proposed in this rulemaking will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses in the State of California.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that this rulemaking will not have any significant impact on small business.

Physicians appointed as Qualified Medical Evaluators fall within the definition of small business, and already are required by existing law to comply with the statutes and regulations governing Qualified Medical Evaluators (QMEs). The Administrative Director is required to issue panels listing three Qualified Medical Evaluators when requested by a party to resolve a disputed issue (Lab. Code §§ 139.2(h), 4062.1, 4062.2, and 139.2(h)(3).) In compiling the panel of three QMEs, from which to select randomly, the Administrative Director must include only evaluators who do not have a conflict of interest as defined by the Administrative Director in regulations adopted pursuant to Labor Code section 139.2(o) and are in the specialty designated by the party holding the legal right to select the specialty. (Lab. Code § 139.2(h)(3)(A).) Proposed regulations 1(dd), 29 and 124 of Title 8 of the California Code of Regulations will require physicians to complete QME Form 124 disclosing specified financial interests when the physician applies for appointment or reappointment as a QME, and on an annual basis when the physician pays the annual fee. This information will be used by the Administrative Director to issue a panel of three QMEs who are independent and do not share the specified financial interests. The 'specified financial interests' to be disclosed on the forms include: 1) being a general partner or limited partner in; or 2) having an interest of five percent or more in; or 3) receiving or being legally entitled to receive a share of five percent or more of the profits from, any medical practice, group practice, medical group, professional corporation, limited liability corporation, clinic or other entity that provides treatment or medical evaluation services for use in the California workers' compensation system. Because disclosure of this information by the physician means entering the information on the proposed QME Form 124, which is then attached to other forms already being submitted by the physician, there is either no, or a *de minimus* amount of, added expense to the QME by this regulation. Therefore, the Administrative Director has concluded there is no significant adverse economic impact on QMEs as small businesses by the adoption of these proposed regulations.

In addition, due to the requirement by Labor Code section 139.2(o) to adopt regulations to prevent conflicts of interest by Agreed Medical Evaluators (AMEs) and QMEs, the Administrative Director has proposed in this rulemaking as sections 41.5 through 41.7 of Title 8 of the California Code of Regulations, regulations governing the types of conflicts of interest that must be disclosed by an evaluator to the parties, the procedures for such disclosures, and the procedures for the parties to either waive the conflict or to obtain another evaluator. The proposed disclosures are limited to disclosing that a conflict of interest exists, the person or entity with

whom the conflict exists, and the general nature of the conflict. The regulations do not require detailed financial disclosures by the evaluator. It is expected that most Agreed Medical Evaluators and Qualified Medical Evaluator will not be affected at all by these proposed regulations. Moreover it is difficult to predict the frequency with which a given physician evaluator will be required to make such a disclosure and therefore unable to continue to perform a medical/legal evaluation for the parties. Even in such cases the potential cost to the evaluator by advising the parties of the conflict is *de minimus* since it will involve mailing a one page disclosure form, QME Form 123, to the parties at a potential cost of less than $ 3.00 per instance. The Administrative Director finds such reporting by physician evaluators to be necessary to comply with the provisions of Labor Code section 139.2, and for the welfare of the people of the State of California who are required to use such evaluators to resolve disputes in the California workers' compensation system.

Further, the Administrative Director is proposing in subdivision 30(f) that at the time of compiling a panel list of 3 QMEs within the designated specialty located within the specified geographic area for which the panel is requested, the Medical Director will give 1.5 times the weight to those QME locations designated as "primary practice locations". "Primary practice location" is defined in proposed section 1(x) as any location at which the physician spends at least 5 or more hours per week engaged in direct medical treatment. Proposed regulation 17(c) will enable each QME to identify up to four "primary practice locations" when listing locations for performing QME evaluations.

These proposed regulations allow multiple QME locations but will ensure that QMEs with fewer locations within a community due to time spent in direct medical treatment are not disadvantaged for selection for a panel, as compared to other QMEs with multiple office locations through a region or the state.

All California employers, including those within the definition of small employer, are required by existing law to provide and pay for reasonable and necessary medical treatment expenses and for medical–legal expenses as part of the workers' compensation benefit and dispute resolution system. Proposed section 36(c) of Title 8, and the related QME Form 120 (§ 120), provide that an employer may incur the cost of one office visit with a physician designated by unrepresented injured employee, for the purpose of reviewing a comprehensive medical–legal report with the employee that was written by a Qualified Medical Evaluator. This cost would only be incurred in cases in which a claimed injury to the psyche is disputed and at the time of a QME evaluation, the unrepresented injured employee uses proposed Form 120 to designate an alternate form of service of the QME report, that is to have the report sent also to the physician designated on the form by the employee. Existing law requires the QME to serve a copy of the report on the injured employee, the claims administrator and the administrative director (via the Disability Evaluation Unit). (See, Lab. Code § 4061(e); 8 Cal. Code Regs. §§ 36(a) and 10160–10161.) A number of the QMEs who have completed such evaluations have expressed concern from a medical and clinical standpoint, that certain injured employees with injuries to the psyche may misunderstand parts of such a report and be adversely affected from a clinical perspective. The employer would only incur the cost of the office visit if the employee filled out proposed QME Form 120 electing that the QME report be served on a physician designated on the form by the employee for this purpose. Under the Official Medical Fee Schedule, the cost of an office visit for psychological counseling could be billed up to $ 98.40; the cost of a 40 minute consultation could be billed at $ 131.62 under the evaluation and management (E & M) codes; the cost of a 60 minute consult could be billed at $ 184.86 under the evaluation and management (E & M) codes.

At the current time, the best estimate by the Division of Workers' Compensation of the number of employers potentially affected per year by this potential additional cost would range between 650 and 850, out of an estimated total of 1,231,532 employers in California. This estimate is based on comparing figures, on an annual basis, for the number of workers' compensation claims made in that year in which injury to the psyche is alleged, to the number of requests in the same year, made by unrepresented employees for a QME panel list of physicians who evaluate injuries to the psyche. Some of the injured employees who might be eligible for this alternate service option proposed in section 36(c) may choose not to use it. Given the small dollar amount of the potential expense per affected employer (minimum $ 98.40; maximum $ 184.86) in a given workers' compensation case and the small number of potentially affected employers (estimated at 7/10's of a percent of all California employers), the Division has concluded this proposed change will not have a significant adverse expense on business.

FISCAL IMPACTS

- **Costs or savings to state agencies or costs/savings in federal funding to the State:** None
- **Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of division 4 of the Government Code:** None (See Local Mandate bullet above)

- **Other nondiscretionary costs/savings imposed upon local agencies:** None (See Local Mandate bullet above)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the Administrative Director's attention, would be more effective in carrying out the purpose of this rulemaking, or would be as effective and less burdensome to the affected private persons, than the proposed action of this rulemaking.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre–regulatory public review and comment for at least ten days through the Division's Internet website (the "DWC Forum"), as required by Government Code section 11346.45.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the Regulations Coordinator named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, pre–rulemaking comments and the Form 399. Also included are the documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations — Rulemaking" link and scroll down the list of rulemaking proceedings to find the Qualified Medical Evaluator Regulations link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 18th Floor, Oakland, California 94612, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the Regulations Coordinator.

CONTACT PERSON FOR GENERAL QUESTIONS

Non–substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E–mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286–7100.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Suzanne Marria
Counsel
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E–mail: smarria@dir.ca.gov

The telephone number of this contact person is (510) 286–7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown will be made available for public

comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations with any final amendments will appear in title 8 of the California Code of Regulations, commencing with section 1. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **January 17, 2008,** at 10:00 a.m.
in the County Administration Center, Room 358
1600 Pacific Highway,
San Diego, California 92101.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **January 17, 2008,** following the Public Meeting in the County Administration Center, Room 358
1600 Pacific Highway,
San Diego, California 92101.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **January 17, 2008,** following the Public Hearing in the County Administration Center, Room 358
1600 Pacific Highway,
San Diego, California 92101.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274–5721 or the state–wide Disability Accommodation Coordinator at 1–866–326–1616 (toll free). The state–wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1–800–735–2929 (TTY) or 1–800–855–3000 (TTY–Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer–Aided Transcription System or Communication Access Realtime Translation (CART), a sign–language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health

Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Low Voltage Electrical Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **January 17, 2008.**

1. TITLE 8: **LOW–VOLTAGE ELECTRICAL SAFETY ORDERS**
   Chapter 4, Subchapter 5
   Electrical Safety Orders, Group 1
   Low–Voltage Electrical Safety Orders

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
   Chapter 4, Subchapter 7, Article 59
   Sections 4297 and 4300 and
   New Section 4300.1
   Table Saws

Descriptions of the proposed changes are as follows:

1. TITLE 8: **LOW–VOLTAGE ELECTRICAL SAFETY ORDERS**
   Chapter 4, Subchapter 5
   Electrical Safety Orders, Group 1
   Low–Voltage Electrical Safety Orders

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues.

On February 14, 2007, the U.S. Department of Labor, Occupational Safety and Health Administration (Federal OSHA) promulgated standards revising the general industry electrical installation standards found in Subpart S of 29 Code of Federal Regulations (CFR) Part 1910. The Board is relying on the explanation of the provisions of the federal standards in Federal Register, Volume 72, No. 30, pages 7136–7221, February 14, 2007, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt standards which are the same as the federal standards except for minor editorial and format differences, and except where existing state standards provide a higher level of safety. Furthermore, obsolete cross–references to California Title 24 are also proposed for deletion under provisions of the Administrative Procedures Act (APA), Section 100, when existing Title 8 sections are otherwise modified for equivalency with federal standards.

In the final rule, Federal OSHA has revised its existing general industry electrical installation standards contained in Sections 1910.302–1910.308 along with relevant definitions found in Section 1910.399. Federal OSHA's existing electrical standards are based on the 1979 edition of National Fire Protection Association (NFPA) 70E, Standard for Electrical Safety Requirements for Employee Workplaces. The final federal rule is based primarily on Part I of the 2000 edition of NFPA 70E which, in turn, is based on the 1999 National Electrical Code (NEC). Thus the proposal will reflect more current practice and technology as well as respond to requests from stakeholders that Subpart S reflect the most recent editions of NFPA 70E which the industry is already voluntarily complying with in its present form. Federal OSHA is of the opinion that the revised standard will facilitate compliance by stakeholders, including small businesses, while also improving safety for employees.

Subjects addressed by the proposal include, but are not limited to, the following:

- Working space / overcurrent device access
- Wiring methods
- Marking & identification
- Grounding
- Temporary wiring
- Outdoor wiring
- Carnivals, circuses, fairs
- Hazardous (classified) locations
- Elevators, escalators, lifts, etc.
- Electrolytic cells
- Remote control, signaling, and power–limited circuits
- Fire alarm systems
- Communications systems
- Integrated electrical systems

Because the proposed standards are substantially the same as the final rule promulgated by federal OSHA, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code. However, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to:

(1) Identify any clear and compelling reasons for California to deviate from the federal standards;

(2) Identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and

(3) Solicit comments on the proposed effective date.

The responses to comments will be available in the rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The standards may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

DOCUMENTS INCORPORATED BY REFERENCE

29 CFR 1910.7, Definition and requirements for a nationally recognized testing laboratory.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Federal Register, Vol. 72, No. 30, February 14, 2007, Preamble Section VI, indicates that the cost to employers associated with implementing the revisions and amendments to 29 CFR 1910, Subpart S, primarily due to requirements for ground fault circuit interrupter protection during temporary wiring installations, to be $9.6 million nationally. The proportion of this cost for California employers is estimated at $1.15 million, based on the portion of the U.S. population dwelling in California (12%).

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no significant economic impact is anticipated. Federal Register, Vol. 72, No. 30, February 14, 2007, Preamble Section VI, indicates that the average compliance costs for small entities are likely to be much less than for larger employers. This is because small employers are more likely to have small projects where temporary power requirements are more likely to be serviceable from permanently wired GFCI receptacles or from other nearby receptacles that are part of an existing building structure.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 59
Sections 4297 and 4300 and
New Section 4300.1
Table Saws

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking was initiated in response to a request from the Division of Occupational Safety and Health (Division) dated November 29, 2004, to add new Section 4300.1 to the General Industry Safety Orders (GISO) concerning the guarding and safe operation of table saws. Article 59 contains standards which pertain to the guarding and safe operation of woodworking machines including a vertical standard for hand–fed circular ripsaws (Section 4300) and one for hand–fed circular knives and cross cut saws (Section 4302). There is no vertical standard for table saws, which are widely used for both ripping and crosscutting. The application of Sections 4300 and 4302 to table saws is unclear, especially when dealing with laminates and manufactured wood products that lack grain orientation, which is commonly relied upon to distinguish between ripping and crosscutting operations. The proposal would add a new vertical standard for hand–fed table saws which would restate the provisions of Sections 4300 and 4302 that are applicable to hand–fed table saws and clarify when the provisions apply with respect to ripping, crosscutting, and other operations.

This proposed rulemaking action contains nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Section 4297. Definitions

Existing Section 4297 includes definitions for the terms used in the Article 59 standards for woodworking machines. The proposal would add a definition of table saw which includes a reference to a new figure of a table saw that would also be added to Article 59. The definition of table saw is substantially the same as the definition in the American National Standards Institute (ANSI) Standard for Woodworking Machinery — Safety Requirements, O1.1–1992. The effect of the new definition is to clarify the scope and application of proposed new Section 4300.1, Table Saws — Manual Feed (Class B).

The proposal would also add new definitions of crosscutting and ripping which are based on the definitions in ANSI O1.1–1992. The effect of the new definitions is to clarify the terms which are used in new Section 4300.1 to describe operations that are exempt from, or covered by, certain requirements.

The proposal would also amend the existing definition of "push stick" by deleting the word "short", which is used to describe the pieces of material that push sticks are used to push, replacing "saws" with "woodworking machines", and adding the phrase "to provide a safe distance between the hand(s) and the cutting tool." The effect of this revision is to clarify the purpose for which push sticks are designed and used.

Section 4300. Circular Ripsaws — Manual Feed (Class B)

Existing subsection (f) requires "A push stick of suitable design shall be provided and used." The standard does not provide instruction on when a push stick is required to be used. Push sticks, as defined in ANSI O1.1 – 1992, are designed to provide a safe distance between the hand(s) and the cutting tool. The proposal would add text to instruct the reader that the use of a push stick is required "when the size of the piece being cut does not provide a safe distance between the hand(s) and the cutting tool."

Section 4300.1. Table Saws — Manual Feed (Class B)

There is no existing vertical standard for hand–fed table saws. Section 4300 applies to hand–fed circular ripsaws and Section 4302 applies to hand–fed circular crosscut saws. Table saws are used for both ripping and crosscutting operations. Furthermore, ANSI O1.1–1992 states that other names for table saws include ripsaw and crosscut saw.

Section 4302 is limited to the provisions in subsections (a), (b) and (c) which relate to guards. Section 4300 also contains provisions for guards in subsections (a), (b) and (c), however subsequent subsections contain additional requirements related to the provision of a spreader, an anti–kickback device and the use of a push stick.

The provisions for guarding hand–fed ripsaws in Section 4300(b) and (c) are identical to the provisions for guarding hand–fed crosscut saws in Section 4302(b) and (c). The guarding requirements in Section 4300(a) differ from those in Section 4302(a) due to the fact that rip saw blades like table saw blades are generally positioned below the table, while crosscut saw blades like radial arm saw blades are generally positioned above the table.

The proposal would add a new vertical standard for hand–fed table saws in Section 4300.1. The provisions for guarding table saws in new Section 4300.1(a) would be identical to the provisions for guarding hand–fed ripsaws in Section 4300(a), (b) and (c), and would apply when either ripping or crosscutting. The requirements in new Section 4300.1(b) for providing a spreader would be identical to those in Section 4300(e), except crosscutting would be added to the list of operations that are exempt from this requirement since it is not applicable to crosscutting operations. The provisions in new

Section 4300.1(c) regarding an anti–kickback device and use of a push stick would be identical to those in Section 4300(d) and revised Section 4300(f), respectively. Since these requirements are not applicable to crosscutting they would only apply when ripping operations are performed. The effect of the proposed new standard is to restate the provisions of Sections 4300 and 4302 that are applicable to hand–fed table saws and clarify when the provisions apply with respect to ripping, crosscutting, and other operations.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed standards merely clarify which of the provisions of existing Section 4300 apply when ripping or crosscutting operations are performed with a hand–fed table saw.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All employers — state, local and private — will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The proposed standards merely clarify which of the provisions of existing Section 4300 apply when ripping or crosscutting operations are performed with a hand–fed table saw.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to

the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274–5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than January 11, 2008. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on January 17, 2008, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274–5743 or e–mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274–5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is http://www.dir.ca.gov/oshsb. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 16. CALIFORNIA BOARD OF ACCOUNTANCY

NOTICE IS HEREBY GIVEN that the California Board of Accountancy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Hotel Kabuki (formerly the Miyako Hotel), 1625 Post Street, San Francisco, California 94115, phone (415) 922–3200, at 11:00 a.m. on January 18, 2008. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on January 17, 2008, or must be received by the Board at the hearing. If submitted at the hearing, it is requested, although not required, that 25 copies be made available for distribution to Board members and staff. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposal if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 5010, 5018, 5027, 5083, 5090, 5092, 5093, and 5095 of the Business and Professions Code and to implement, interpret or make specific Sections 5023, 5028, 5070.7, 5083, 5090, 5092, 5093, and 5095 of the Business and Professions Code, the California Board of Accountancy is considering changes to Division 1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Amend Sections 11.5, 12, and 12.5 of Title 16 of the California Code of Regulations.

Business and Professions Code Section 5010 authorizes the Board to adopt regulations for the orderly administration of the Accountancy Act. Subdivision (b) of the Business and Professions Code Section 5090 requires that applicants for the Certified Public Accountant (CPA) license comply with the education, examina-

tion, and experience requirements in either Section 5092 (Pathway 1) or Section 5093 (Pathway 2). Business and Professions Code Section 5027 requires the Board to adopt regulations specifying continuing education (CE) for its licensees. Section 5095 of the Business and Professions Code requires that licensees must have a minimum of 500 hours of Board–approved experience in attest services in order to be authorized to sign reports on attest engagements.

Current Section 11.5 specifies that an applicant whose required experience was obtained five or more years prior to application for licensure must obtain 48 hours of CE in specific subject matter areas prescribed by the Board. However, the subject matter areas are not listed. This proposal identifies those specific subject matter areas to be financial accounting standards, auditing standards, compilation and review, and other comprehensive basis of accounting. In addition, this proposal allows the Board to determine whether the 48 hours of CE will be required, by changing the language regarding the CE to "may be required. . . ." Applicants must submit certificates of course completion to the Board, if the courses are required.

Current Section 12 specifies that applicants applying under either Pathway 1 or Pathway 2 with required experience that was obtained five or more years prior to application for licensure must obtain 48 hours of continuing education in specific subject matter areas prescribed by the Board. However, the subject matter areas are not listed. This proposal identifies the specific subject areas to be general accounting, and other comprehensive basis of accounting. In addition, this proposal allows the Board to determine whether the 48 hours of CE will be required, by changing the language regarding the CE to "may be required. . . ." Applicants must submit certificates of course completion to the Board, if the courses are required.

Current Section 12.5 specifies that applicants with required attest experience that was obtained five or more years prior to application for licensure may be required to obtain 48 hours of continuing education in specific subject matter areas prescribed by the Board. However, the subject matter areas are not listed. This proposal identifies the specific subject areas to be financial accounting standards, auditing standards, compilation and review, and other comprehensive basis of accounting. In addition, applicants must submit certificates of course completion to the Board, if the courses are required.

The objective of this proposal is to revise Sections 11.5, 12, and 12.5 to identify those specific subject matter areas for which the Board requires 48 hours of documented continuing education when an applicant's qualifying experience was obtained five or more years prior to application. The subject matter areas required would ensure that applicants have current knowledge of applicable professional standards in those areas even though their experience may not have been performed under the most current applicable professional standards. The change to the Board's decision whether to require the CE units allows the Board to determine if the circumstances of individual applicants preclude the need for the CE (e.g., if the Uniform CPA Exam was passed within the last five years prior to application for licensure). In addition, these changes would provide consistency among these three sections, all of which deal with CE for applicants whose experience was gained five or more years prior to application for licensure.

2. Amend Section 37 of Title 16 of the California Code of Regulations.

Business and Professions Code Section 5010 authorizes the Board to adopt regulations for the orderly administration of the Accountancy Act and Section 5027 requires the Board to adopt regulations specifying continuing education for its licensees. Business and Professions Code Section 5070.7 specifies that permits that are not renewed within five years after expiration may not be renewed, restored, or reinstated, unless the Board reinstates the permit with any conditions and restrictions required by the Board.

Current Section 37 allows licensees whose certificates were cancelled under Business and Professions Code Section 5070.7 to apply for a new certificate, as specified, if the applicant has completed at least 120 hours of continuing education within three years prior to the date of application. Of the 120 hours, 48 must be within specified subject matter areas. This proposal decreases the amount of continuing education to 48 hours, requires certificates of course completion, and identifies the specific subject matter areas prescribed by the Board for both a reissued certification which authorizes signing reports on attest engagements as well as a reissued certificate that does not provide that authorization. Application for a reissued certificate authorizing the applicant to sign attest reports requires 48 hours in financial accounting standards, auditing standards, compilation and review, and other comprehensive basis of accounting. Application for a reissued certificate that does not provide attest report signing authority requires 48 hours in general accounting and other comprehensive basis of accounting. The proposal also allows a CPA whose cancelled certificate authorized signing reports on attest engagements to apply instead to be reissued a certificate that does not authorize signing attest reports. In addition, a minor wording change is made to improve the clarity of this section.

The objective of this proposal is to identify the subject matter areas that meet the Board's requirements and to provide consistency in continuing education require-

ments in cases where a licensee's experience is not current. The subject matter areas required and documented would ensure that applicants have current knowledge of applicable professional standards in those areas even though their experience may not have been performed under the most current applicable professional standards. In addition, applicants are provided the flexibility to apply for certification for general accounting work if they choose not to return to attest work.

3. Amend Section 87.1 of Title 16 of the California Code of Regulations.

Business and Professions Code Section 5010 authorizes the Board to adopt regulations for the orderly administration of the Accountancy Act. Business and Professions Code Section 5027 requires that the Board adopt regulations specifying continuing education requirements for its licensees. Business and Professions Code Section 5028 authorizes the Board to make exceptions from continuing education requirements for licensees not engaged in public practice.

Subdivision (d) of Business and Professions Code Section 5027 requires that licensees, within a six–year period, complete continuing education on the provisions of the Accountancy Act and the rules of professional conduct. Section 87.7 of Title 16 specifies the continuing education course that must be completed for compliance with the requirements of subdivision (d) of Section 5027.

Current Section 87.1 specifies requirements for licensees who elect to convert their licenses from inactive status to active status prior to the next license expiration date including requirements for completing specified continuing education. Current Section 87.1 requires that licensees converting their licenses from inactive to active status complete the continuing education course described in Section 87.7 within the 24–month period prior to conversion to active status. This proposal would revise that provision so that the course would only be required in those instances in which more than six years have elapsed since the licensee last completed the course. This proposal would also make minor wording changes to update and improve the clarity and consistency of Section 87.1.

The objective of this proposal is to revise Section 87.1 so that licensees converting from inactive to active status under the provisions of Section 87.1 are no longer required to complete the continuing education course described in Section 87.7 more frequently than other licensees with an active license.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Insignificant.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies were relied upon in making that determination: None.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above–mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2000 Evergreen Street, Suite 250, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Website listed below.

CONTACT PERSON

Inquiries concerning the substance of the proposed administrative action may be addressed to:

Name: Melody L. Friberg
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815

Telephone No.: (916) 561–1792
Fax No.: (916) 263–3675
EMail Address: mfriberg@cba.ca.gov

The backup contact person is:

Name: Dan Rich
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815

Telephone No.: (916) 561–1713
Fax No.: (916) 263–3675
EMail Address: drich@cba.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Melody L. Friberg at (916) 561–1792.

Website Access: Materials regarding this proposal can be found at *www.dca.ca.gov/cba*.

TITLE 16. VETERINARY MEDICAL BOARD

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the State Capitol, 1st Floor Committee Hearing Room 112, main entrance is located on 10th Street, between L & N, Sacramento, CA 95814 at 10:00 a.m. on Wednesday, January 16, 2008. Written comments, including those sent by mail, facsimile, or e–mail to the address listed under Contact Person in this Notice, must be received by the board at its office not later than 5:00 p.m. on January 14, 2008, or must be received by the board at the hearing.

The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY & REFERENCE

Pursuant to the authority vested by Section 4808 of the Business and Professions Code, and to implement, interpret or make specific Section 4841.5 of said Code, the board is considering changes to Division 20 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law defines educational requirements for Registered Veterinary Technicians (RVT) to include a prescribed education and training program. This regulatory proposal will adopt a new regulation to allow lay staff (unregistered assistants) a limited term opportunity to apply for the Registered Veterinary Technician examination based upon specific experience and skills certified by their employing veterinarian.

1. Adopt Section 2068.7

Existing regulations require applicants for the Registered Veterinary Technician Examination to: 1) be a graduate of an American Veterinary Medical Association (AVMA) or California approved RVT Program; or 2) complete a two year community college curriculum and 18 months of practical experience under the direct supervision of a licensed veterinarian if a graduate of a non–approved RVT program; or 3) obtain a Bachelor of Science (BS) or Bachelor of Arts (BA) degree in an animal related science field including but not limited to animal husbandry, biology, chemistry, or biochemistry,

and complete 12 months of practical experience; or 4) complete a combination of postsecondary education and complete 36 months practical experience under the direct supervision of a California licensed veterinarian.

This proposed regulation would adopt a new section that would allow a lay person, whose supervising veterinarian has certified that they have a minimum of five years work experience and at least 7360 hours of directed clinical practice in specific entry–level skills, eligibility to take the RVT examination.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Use of the alternative category is optional and is not mandated, therefore there is no impact.

Impact on Jobs/New Businesses:

The board has determined that this regulatory proposal would have no significant impact on the creation of jobs or the elimination of jobs or impact the creation of or eliminate existing businesses or the expansion of businesses in the State of California. Use of the alternative category is optional and is not mandated, therefore there is no impact.

Cost Impact on Representative Private Person or Business:

The Veterinary Medical Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has determined that the proposed regulation would not affect small businesses. This proposal provides veterinary practices that currently employ lay staff (unregistered assistants) to perform veterinary healthcare tasks, including the administration of controlled substances, an alternative category of eligibility for lay staff to qualify and sit for the RVT examination and become registered. Use of the alternative category is optional and is not mandated, therefore there is no impact.

Legislation that effective January 1, 2008 will permit lay staff access to controlled substances under "indirect" supervision until it sunsets in 2012. The U.S. Drug Enforcement Administration (DEA), under the U.S. Controlled Substances Act, outline the many restrictions related to dispensing and administration of controlled substances. One of these restrictions is related to employees who have had a felony drug conviction. Title 21, of the Code of Federal Regulations, Part 1300, section 1301.76(a) states in pertinent part that licensees with a DEA registration shall not employ, as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances or who, at any time, had an application for registration with the DEA denied or revoked or has surrendered a DEA registration for cause. Registration of lay staff would allow the Board to determine minimum competency by examination, perform background checks to determine whether an applicant has any prior convictions that would prevent them from being registered, and provide for enforcement discipline actions independent of the veterinary practice.

Lay staff will be authorized to administer controlled substances under the indirect supervision of a veterinarian effective January 2008 through 2012. This authorization is a short term solution to a long term problem. The Board believes that the proposed regulation would give licensees the ability to identify trained lay staff as eligible to sit for the examination and ensure that the individual's background information is reviewed and in compliance with CRF Section 1301.76(a). The Board believes that due to the fact that controlled substances can be dangerous and are highly susceptible to diversion, and the fact that RVT's can be disciplined independent of a veterinarian, the proposed regulation would provide added consumer protection through increased numbers of registered veterinary technicians.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above–mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Veterinary Medical Board at 1420 Howe Avenue, Suite 6, Sacramento, CA 95825–3228.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Linda Kassis
Address: 1420 Howe Avenue, Suite 6
Sacramento, CA 95825–3228
Telephone No.: (916) 263–2610
Fax No.: (916) 263–2621
E–mail Address: Linda_Kassis@dca.ca.gov

The backup contact person is:

Name: Susan Geranen
Address: 1420 Howe Avenue, Suite 6
Sacramento, CA 95825–3228
Telephone No.: (916) 263–2610
Fax No.: (916) 263–2621
E–mail Address: susan_geranen@dca.ca.gov

Website Access:

Materials regarding this proposal can be found at www.vmb.ca.gov

TITLE 16. VETERINARY MEDICAL BOARD

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the State Capitol, 1st Floor Committee Hearing Room 112, main entrance is located on 10th Street, between L & N, Sacramento, CA 95814 at 10:00 a.m. on Wednesday, January 16, 2008. Written comments, including those sent by mail, facsimile, or e–mail to the address listed under Contact Person in this Notice, must be received by the board at its office not later than 5:00 p.m. on January 14, 2008, or must be received by the board at the hearing.

The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY & REFERENCE

Pursuant to the authority vested by Section 4808 of the Business and Professions Code, and to implement, interpret or make specific Section 4841.5 of said Code, the board is considering changes to Division 20 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law defines educational requirements for Registered Veterinary Technicians (RVT) to include a prescribed education and training program. Existing regulations require applicants for the Registered Veterinary Technician Examination to: 1) be a graduate of an American Veterinary Medical Association (AVMA) or California approved RVT Program; or 2) complete a two year non–approved RVT program and obtain 18 months of non–specific practical experience under the direct supervision of a licensed veterinarian; or 3) obtain a Bachelor of Science (BS) or Bachelor of Arts (BA) degree in an animal related science field including but not limited to animal husbandry, biology, chemistry, or biochemistry, and complete 12 months of non–spe-

cific practical experience; or 4) complete a combination of postsecondary education and complete 36 months practical experience under the direct supervision of a California licensed veterinarian.

Existing law also refers to a publication used by the California Veterinary Medical Association for purposes of approving internship/residency training hospital.

This regulatory proposal will amend the date of the publication used for approval of internship/residency training hospitals, repeal sections containing out of date and unnecessary eligibility categories and amend sections to consolidate and clarify the practical experience requirements for consistency and currency.

1. Amend Section 2021(g)

Existing regulation references a publication entitled "Internship and Residency Approval Program" dated July 8, 1999, used by the California Veterinary Medical Association (CVMA) to evaluate internship or residency program approval. Non–substantive changes made to the document require the Board to update the regulation to reflect the current revision date of April 10, 2007, for the publication titled "Internship and Residency Approval Program".

2. Repeal Section 2067

Business and Professions Code Section 4841.5 requires an applicant for the Registered Veterinary Technician examination to provide evidence of graduation from, at minimum, a two–year curriculum in veterinary technology, in a college or other postsecondary institution approved by the board, or the equivalent therefore as determined by the board. Existing regulation defines the equivalent to the two–year curriculum requirement as completing a non–approved RVT program and 18 months of non–specific practical experience under the direct supervision of a licensed veterinarian.

The Board has determined this regulation not to be equivalent to a "two year curriculum in veterinary technology". These proposed regulations would repeal section 2067 and eliminate the eligibility category for graduates of non–approved RVT program with 18 months of non–specific practical experience and those candidates who qualify under this category to apply under Section 2068.5 with specific education and practical experience requirements.

3. Repeal Section 2068

Business and Professions Code Section 4841.5 requires an applicant for the Registered Veterinary Technician examination to provide evidence of graduation from, at minimum, a. two–year curriculum in veterinary technology, in a college or other postsecondary institution approved by the board, or the equivalent therefore as determined by the board. Existing regulation defines the equivalent to be any applicant who receives a Bachelor of Science degree in a field or major related to animal health technology, including but not limited to animal husbandry, biology, chemistry, or biochemistry and a minimum of twelve (12) months of practical experience.

The Board has determined this regulation not to be equivalent to a "two year curriculum in veterinary technology". These proposed regulations would repeal section 2068 and eliminate the eligibility category for candidates who hold applicable bachelor degrees to sit for the RVT examination and incorporate these candidates into the alternate route category with specific education and practical experience requirements.

4. Amend Section 2068.5

Section 2068.5 outlines the eligibility requirements whereby candidates for the RVT licensing examination can obtain a specific amount of education and practical experience. This eligibility category is referred to as the "alternate route" and requires completion of a combination of postsecondary education equal to 20 semester units, 30 quarter units, or 300 hours of instruction. Education and experience shall be accumulated in the fundamentals and principles of specific subjects specified in Section 2068.5 and must be provided by a postsecondary academic institution or by a qualified instructor, in addition to 36 months practical experience under the direct supervision of a California–licensed veterinarian.

The proposed regulations outline specific education and experience requirements, clarify that the practical experience requirement is to be specific and directed by the supervising veterinarian and is to be 24 months consistent with the existing definition of "full time" in Section 2021(a).

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The board has determined that this regulatory proposal would have no significant impact on the creation of jobs or the elimination of jobs or impact the creation of

or eliminate existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Veterinary Medical Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has determined that the proposed regulation would not have a significant impact on small businesses. This proposal consolidates existing eligibility categories into the alternate route category, thus making education and practical experience requirements equivalent and consistent with all other eligibility categories.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above–mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Veterinary Medical Board at 1420 Howe Avenue, Suite 6, Sacramento, CA 95825–3228.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Linda Kassis
Address: 1420 Howe Avenue, Suite 6
Sacramento, CA 95825–3228
Telephone No.: (916) 263–2610
Fax No.: (916) 263–2621
E–mail Address: Linda_Kassis@dca.ca.gov

The backup contact person is:

Name: Susan Geranen
Address: 1420 Howe Avenue, Suite 6
Sacramento, CA 95825–3228
Telephone No.: (916) 263–2610
Fax No.: (916) 263–2621
E–mail Address: susan_geranen@dca.ca.gov

Website Access:

Materials regarding this proposal can be found at www.vmb.ca.gov

TITLE 18. FRANCHISE TAX BOARD

As required by section 11346.4 of the Government Code, this is notice that a public hearing has been scheduled to be held at 2:00 p.m., January 16, 2008, at 9646 Butterfield Way, Town Center, Golden State Room A, Sacramento, California, to consider adoption of amendments to sections 24411 and 25106.5–1 under Title 18 of the California Code of Regulations, pertaining to the ordering of dividends that are paid from income that has been included in a unitary combined report and from income that has not been included in a unitary combined report.

An employee of the Franchise Tax Board will conduct the hearing. Thereafter, a report will be made to the three–member Franchise Tax Board for its consideration. Government Code section 15702, subdivision (b), provides for consideration by the three–member Board of any proposed regulatory action if any person makes such a request in writing. The three–member Board will consider the proposed amendments to the existing regulations and comments submitted with re-

spect to those proposed amendments prior to acting upon it at one of its meetings.

Interested persons are invited to present comments, written or oral, concerning the proposed regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., January 16, 2008. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

AUTHORITY & REFERENCE

Section 19503 of the Revenue and Taxation Code authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with section 17001), Part 10.2 (commencing with section 18401), Part 10.7 (commencing with section 21001) and Part 11 (commencing with section 23001) of the Revenue and Taxation Code. The proposed regulatory action interprets, implements, and makes specific sections 24411 and 25106.5 of the Revenue and Taxation Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Dividends received by one member of a unitary combined reporting group (see California Code of Regulations, title 18, section 25106.5(b)(3)) that are paid by another member of a unitary combined reporting group from income that was included in the unitary group's combined report (see California Code of Regulations, title 18, section 25106.5(b)(1)) are eliminated entirely from the income of the dividend recipient. (See Revenue and Taxation Code section 25106). Dividends received by members of a water's–edge group (see California Code of Regulations, title 18, section 24411(b)(3)) from their foreign affiliates that are not included in the water's–edge group are generally 75 percent deductible. (See Revenue and Taxation Code section 24411.)

The existing regulations under California Code of Regulations, title 18, section 24411, contain examples of how dividends that are paid by a specific payor are to be treated when a portion of the dividend qualifies for elimination pursuant to Revenue and Taxation Code section 25106 and a portion qualifies for partial deduction pursuant to Revenue and Taxation Code section 24411.

Despite the rules implicit in the examples contained in California Code of Regulations, title 18, section 24411, on July 7, 2004, the First Appellate District Court of Appeal issued its opinion in *Fujitsu It Holdings, Inc. v. Franchise Tax Board* (2004) 120 Cal.App. 4th 459, wherein it essentially eschewed the rules implicit in the examples contained in California Code of Regulations, title 18, section 24411, and instead, analogized to rules that it believed were implicit in the examples contained in California Code of Regulations, title 18, section 25106.5–1.

On November 20, 2006, the California State Board of Equalization (SBE) published its decision in the Appeal of Apple Computer, Inc., Cal. St. Bd. of Equal., November 20, 2006, 2006–SBE–002 (*Apple*). The year involved in *Apple* was 1989, and the issue decided was the same issue decided in the *Fujitsu* case discussed in the prior paragraph. The SBE rejected the reasoning of the Court of Appeal in *Fujitsu* and relied upon the rules implicit in the existing regulations to find in favor of the Franchise Tax Board. In order to clarify the relationship between the two regulations and to conform to the decision in *Apple*, the Franchise Tax Board is proposing to amend California Code of Regulations, title 18, sections 24411 and 25106.5–1, in order to eliminate any further potential for the two regulations being misinterpreted and to eliminate any confusion occasioned by the different result of the decisions in *Fujitsu* and *Apple*.

With respect to Regulation section 24411, subsection (a), the amendment merely provides that a deduction pursuant to Revenue and Taxation Code section 24411 is not allowed if the dividend at issue can be deducted or eliminated under another section of the Revenue and Taxation Code.

The amendment in subsection (b) is merely a rewording of existing language in that subsection that provides that "qualifying dividends" can relate to dividends paid from income that has previously been included in a combined report.

The amendment in subsection (c)(1) is a rewording of existing language in the subsection that mirrors language contained in Revenue and Taxation Code section 24411.

The amendment in subsection (c)(2) is a rewording of existing language in the subsection. It essentially reiterates the rule contained in the amendment to subsection (a).

The amendment in subsection (e)(1) specifically incorporates Internal Revenue Code section 316 and explicitly provides that a dividend is considered to be paid proportionally from every source of income that gave rise to earnings and profit for the year and that the ded-

uctibility or elimination of the dividend will be based on a pro–rata rule.

The original version subsection (e)(2)(A) provides that dividends are paid out of earnings and profits on a last–in–first–out basis. The amendment in subsection (e)(2)(A) now cites to Internal Revenue Code section 316 as authority that supports that proposition.

The amendment in subsection (e)(2)(B) merely reiterates that the portion of dividends paid from income that has been included in a combined report will be treated in accordance with the rule set forth in the amendment to subsection (e)(1).

The amendment in subsection (e)(3) merely provides the specific citation in the Revenue and Taxation Code wherein the concept of "Subpart F Income" is expounded upon.

The amendments in subsection (e)(4) contain a clarification and expansion of four separate fact patterns wherein dividends are received that have been paid from income that was included in a combined report and income that was not included in a combined report.

With respect to Regulation section 25106.5–1, subsection (b)(1)(A)4 expands the definition of an intercompany transaction **involving the transfer** of stock to provide that the distribution is eliminated pursuant to Revenue and Taxation Code section 25106, or results in a distribution in excess of basis that is treated in accordance with the rules included in subsection (f).

The amendments in subsection (f)(2) contain a clarification and expansion of two separate fact patterns wherein dividends are paid and received from members of the same combined reporting group, but the dividends have been paid from income that was included in a combined report and income that was not included in a combined report.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code section 17500, of Division 4: None.

Other non–discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Potential cost impact on private persons or businesses affected: The Franchise Tax Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on the creation or elimination of jobs in the state: None.

Significant effect on the creation of new businesses or elimination of existing businesses within the state: None.

Significant effect on the expansion of businesses currently doing business within the state: None.

Effect on small business: The regulation is generally utilized by large multinational corporations and not small businesses.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

The proposed regulatory action pertains to corporate taxpayers and therefore does not affect private persons.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

An initial statement of reasons has been prepared setting forth the facts upon which the proposed regulatory action is based. The statement includes the specific purpose of the proposed regulatory action and the factual basis for determining that the proposed regulatory action is necessary.

The express terms of the proposed text of the regulation and the initial statement of reasons and the rulemaking file are prepared and available upon request from the agency contact person named in this notice. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board's website mentioned below.

CHANGE OR MODIFICATION OF ACTIONS

The proposed regulatory action may be adopted by the three–member Franchise Tax Board after consideration of any comments received during the comment period.

The regulation may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed. The text of the reg-

ulation as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulation should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing who is in need of a language interpreter or sign language assistance, should contact the officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741–1720; Telephone (916) 845–3306; Fax (916) 845–3648; E–Mail: colleen berwick@ftb.ca.gov. The notice, initial statement of reasons and express terms of the regulation are also available at the Franchise Tax Board's website at www.ftb.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
CESA No. 2080–2007–020–02

PROJECT:	Tisdale Bypass Channel Rehabilitation and Ongoing Maintenance Project
LOCATION:	Sutter County
NOTIFIER:	Jean Witzman
APPLICANT:	California Department of Water Resources (CDWR)

BACKGROUND

The Tisdale Bypass (Bypass) is a key element in the Sacramento River Flood Control Project (SRFCP), providing a connection between the Sacramento River and the Sutter Bypass. The Bypass is a 4.5–mile long trapezoidal channel with a passively operated weir at its west end. Under flood conditions, Sacramento River flow spills over Tisdale Weir when the river's stage reaches 45.5 feet (USED). The levees on the north and south of the Bypass contain these flood waters and carry the flows into the Sutter Bypass. From there, flows pass downstream to the Sacramento River and the Yolo Bypass. The Tisdale Bypass provides flood protection to the Sutter and Colusa Basins, the town of Knights Landing, the West Side Levee District, Reclamation Districts 108 and 1500, State Highways 45 and 113, and the infrastructure that supports the area.

The flood carrying capacity of the Tisdale Bypass (Bypass) is currently inadequate and must be restored so that it will function as intended. Since the last time sediment was removed from the Bypass, flood flows have continued to deposit new sediment in the channel and scoured areas downstream of the weir. In areas of the Bypass where the water table allows, woody vegetation has grown, further reducing capacity to pass design flows. In order to comply with CDWR's maintenance responsibility, approximately 2,000,000 cubic yards (CY) of accumulated sediment needs to be removed from the entire length of the Bypass to help restore the majority of the design capacity to this portion of the SRFCP.

The components of the project are:

A. Channel excavation. CDWR proposes to remove up to 2,000,000 CY of accumulated sediment from the Tisdale Bypass to restore its channel's capacity. The typical depth of cuts within the Bypass will range up to nine feet. Typical slopes on areas of cut on the north and south sides of the channel will be approximately 3 feet horizontally for each 1–foot vertically (3:1). After the sediment removal, the elevation of the Bypass will match its original design elevation, which is 36.4 feet at the Tisdale Weir and 28.1 feet at the eastern end of the Bypass. This cut results in a channel slope of approximately 0.0004 ft/ft. from the weir to the Sutter Bypass. The area of cut will remain within the limits of the major tree lines on and along the Bypass' north and south levees. These lines of trees will continue to serve as an erosion control for wind waves along the levees.

B. Sediment disposal. The sediment excavated from the Bypass will be placed north of the Bypass' north levee west of Reclamation Road. Approximately 250,000 CY of sediment will be disposed in the levee right of way from the road to the western–most boundary of APN–21–280–007. Approximately 1,750,000 CY will be disposed in a stockpile extending 1,000 feet north

from the levee right of way over about 65 acres of farmland. All of this material will be placed to a height equal to the top of the levee, approximately 20 to 25 feet above the existing ground. Side slopes on all material will be approximately 3:1 or shallower. In addition, the new sediment stockpile will be maintained in a similar fashion to the existing levee (burning, dragging, and filling voids in the levee) for a distance of approximately 100 feet from the side of the levee road. The rest of the stockpile will remain undisturbed for the most part: occasional spraying to control woody vegetation may occur.

The existing drainage ditch along the levee's toe will be filled. A new drainage ditch will be established north of the spoil stockpile to carry runoff from the land to the west and north before the existing ditch is filled. The new drainage ditch will move water toward Reclamation Road and then south along the east side of the stockpile to the existing siphon under the Reclamation Road Bridge. If needed, the existing drainage ditch west of the sediment stockpile will be re–graded to minimize impoundment of water against the levee.

C. Levee repair. Erosion near the Tisdale Weir's right abutment makes it necessary to place rock on the south levee's waterside slope to an elevation approximately 10 feet above the levee's toe, approximately elevation 49.1 for a distance of up to 200 feet, east of the Tisdale Weir.

On the north levee at Reclamation Road, scour is occurring for two reasons. First, debris constricts flow under the bridge pushing the flow towards the north levee. This problem is exacerbated by an area of trees and sediment immediately downstream of the bridge which focuses the energy from this flow onto the north levee. Rock will need to be placed to an elevation approximately 10 feet above the north levee's toe, approximately elevation 47, for a distance of 100 feet upstream of the bridge and approximately 300 feet downstream of the bridge to stop further erosion. The downstream limit of this revetment is the return water canal from Reclamation District 1660's return pumps. In addition, the area of accumulated sediment and trees approximately 250 feet wide and 300 feet long immediately downstream of the bridge will be removed to lessen flood flows' impact on the levee.

D. Equipment staging. Two equipment staging areas will be located within the Bypass excavation area. These areas will each be approximately 15,000 square feet: one will be located east of the Reclamation Road Bridge and the other west of the bridge. In addition, a temporary construction trailer will be located in RD 1660's corporation yard on an existing concrete pad.

E. Haul routes. Material will be removed and transported by rubber–tired scrapers proceeding along haul roads located within the Bypass. These scrapers will then proceed across the north levee to the spoil sites. Up to three ramps may be constructed. One ramp will be placed over the levee immediately west of Reclamation Road, and additional ramps will be placed approximately 3/8–mile and 3/4–mile west of Reclamation Road, near the mid–point and west end of the disposal areas.

Each ramp will be approximately 30 feet wide at its crest and up to 120 feet wide at its base and require about 10,000 cubic yards of material, which will be excavated from the Bypass' channel. After dumping the spoil material, scrapers will proceed back over the same ramps or secondary ramps thereby re–entering the Bypass for further sediment removal.

Because of the project's potential for take of the listed Giant garter snake (*Thamnophis gigas*)(snake), the U.S. Army Corps of Engineers consulted with the U.S. Fish and Wildlife Service (Service), as required by the Endangered Species Act ("ESA") (16 U.S.C. § 1531 et seq.). On May 18, 2007, the Service issued Biological Opinion No. 1–1–07–F–0164 for the Tisdale Bypass Channel Rehabilitation and Ongoing Maintenance Project, describing the project actions and setting forth measures to mitigate impacts to the snake and its habitat, listed under the California Endangered Species Act, Fish and Game Code Sections 2050 *et seq*. ("CESA"). On July 10, 2007, the Director of the Department Of Fish and Game (DFG) received a notice from pursuant to Fish and Game Code Section 2080.1, requesting a determination that the Federal Biological opinion is consistent with CESA.

DETERMINATION

Based on the terms and conditions in the federal Biological Opinion No. 1–1–07–F–0164, DFG has determined that the project is consistent with CESA because the project and mitigation measures meet the conditions set forth in Fish and Game Code Section 2081(b) and (c) for authorization of incidental take of species protected under CESA. The Department's findings are based on the primary premise that the impacts associated with the project will be temporary, and that upon completion of the project, the amount and quality of habitat available to the Giant garter snake will be greater than what currently exists on the project site. The Department specifically finds that the measures identified in the Biological

Opinion will minimize and fully mitigate the project's potential impacts on the snake. These measures include, but are not limited to, the following requirements:

A. For the Bypass Rehabilitation (channel excavation, levee repair, and sediment disposal) portions of the project.

1. To the extent practicable, construction activity within giant garter snake habitat will be conducted within the snake's active season (May 1 to October 1), when direct mortality is lessened because snakes are expected to actively move and avoid danger. CDWR recognizes, though, that construction activities are scheduled to occur through November 15, and avoidance of uplands within 200 feet of the dewatered north–south ditch and the newly created west–east "toe" drainage ditch is impossible. Construction activities are expected to be continuous and potentially occur 24 hours/day from the beginning of the project until completion. Additional minimization measures for these areas are listed below.
2. Vegetation clearing will be confined to the minimal area necessary to facilitate construction activities. Giant garter snake habitat that can be avoided by construction activities will be flagged where necessary.
3. A Service–approved biologist will conduct an environmental awareness training session for construction personnel that will instruct workers on how to identify giant garter snakes and their habitat, how they can minimize take of the snake, and what to do if they encounter a snake, and any additional terms and conditions of the biological opinion and other environmental documents obtained for the proposed project.
4. At most, 24–hours prior to construction activities, the project area will be surveyed for giant garter snakes. Surveys will be repeated if a lapse in construction activity of two weeks or greater occurs. A Service–approved biological monitor will be made available thereafter.
5. If a giant garter snake is observed, construction activities will be redirected to another portion of the project area until the snake has moved away on its own. Any giant garter snakes observed or incidentally taken will be reported to the Division Chief of Endangered Species, Sacramento Fish and Wildlife Office (916) 414–6600 within three working days and reported to the California Natural Diversity Database.
6. The new west–east drainage ditch will be constructed and operational before the existing drainage ditch along the toe of the levee is filled. In addition, the existing ditch will be dewatered for at least 15 days before it is filled. The new ditch will increase the amount of potential giant garter snake aquatic habitat by 0.2 acre (from 0.75 to 0.95).
7. The north–to–south drainage ditch on the west side of the disposal area will be dewatered for at least 15 days prior to sediment disposal on the adjacent farmland to reduce the likelihood that a snake may be drawn into the construction area.
8. Re–grading of the north–south drainage ditch, should it be necessary, shall take place prior to October 1.
9. No plastic, monofilament, jute, or similar erosion matting, that could entangle snakes, will be used on the project site. Earthen berms will be created around the stockpile to prevent erosion into the adjacent drainage ditches.
10. The worksite will be kept free of trash that could attract predators of giant garter snakes to the area.
11. After completion of construction activities, any temporary fill and construction debris will be removed.
12. The CDWR will completely restore 1.05 acres of aquatic giant garter snake habitat in the form of ditches to pre–project conditions and restore and enhance 34.28 acres of giant garter snake upland habitat to higher quality upland snake habitat.
13. Uplands will be restored using a native grass and forb seed mixture on the stockpile and ramps over the levees.
14. After completion of construction activities, the project site will be evaluated (1) upon completion of on–site restoration implementation and (2) one year from restoration implementation. These compliance reports, prepared by a Service–approved biologist, will be forwarded to the Chief of the Endangered Species Division of the Service's Sacramento Field Office. Monitoring reports will include photo documentation, including pre– and post–project area photographs.

15. A post–construction report, prepared within 60 days after completion of the project, will detail dates that construction occurred, information detailing the project conservation and restoration measures, an explanation of any failures to meet conservation measures, any known project effects on federally listed species, any occurrences of incidental take of federally listed species, and any other pertinent information.

    The one–year monitoring report will discuss site restoration efforts and include recommendations for remedial actions if necessary.

B. For maintenance of flood control projects, including the Tisdale Bypass (these conservation measures are taken directly from the current MOU CDWR holds with DFG (2003)):

1. Heavy equipment work within or immediately adjacent (within 15 feet) to standing water, flowing water, or areas where CDWR reasonably anticipates flowing water will occur between July 1 and October 1.
2. Heavy equipment work on levees within 50 feet, but no closer than 15 feet, of the low flow channel will occur between July 1 and October 1.
3. Vegetation control by burning levee slopes will occur between May 1 and October 1.
4. Control of woody and brushy vegetation by mechanical means (e.g., by brush hog or similar device) will occur between July 1 and October 1.
5. Filling or grouting rodent burrows and other "gaps" in levees and within channels will occur between May 1 and October 1, provided that the ambient temperature exceeds 75°F.
6. The work periods listed above are intended to avoid adverse impacts to fully protected and listed species. CDFG may impose additional conditions on the maintenance work covered by the MOU if CDFG determines that such conditions are necessary to protect a fully protected and/or listed species from harm. If CDWR encounters a fully protected or listed species or any snake, regardless of whether the snake is fully protected or listed, while performing maintenance work, CDWR shall suspend all work until the fully protected or listed species or snake has escaped from the work area. CDWR shall notify CDFG of all confirmed observation of any listed or fully protected species, including giant garter snakes, in, or adjacent to, any work area covered by the MOU.

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of GGS for the project, provided CDWR implements the project as described in the Biological Opinion, as amended, and complies with the mitigation measures and other conditions described therein. If there are any substantive changes to the project, including changes to the mitigation measures, or if the Service amends or replaces the Biological Opinion, CDWR will be required to obtain a new consistency determination or a CESA incidental take permit (in accordance with Fish and Game Code section 2081) from DFG.

DEPARTMENT OF FISH AND GAME

Consistency Determination
Fish and Game Code Section 2080.1
California Endangered Species Act (CESA)
No. 2080–2007–028–04

Project:	City of Delano Wastewater Treatment Plant Expansion
Location:	Delano, Kern County
Notifier:	City of Delano

BACKGROUND

The City of Delano's (City) wastewater treatment plant (WWTP) is currently at its capacity of 4.4 million gallons a day (mgd), and it has been determined that the City would require an increase to 8.8 mgd. The expansion of the WWTP (the Project) will be located within the existing wastewater treatment plant footprint, but will require construction of approximately 12,500 linear feet of effluent pipeline, 30,000 linear feet of trunk sewers, and a 30–acre storage/percolation pond located off–site. The effluent pipeline is proposed for discharge of treated effluent into a 30–acre pond located within 480 acres of farmland owned by the City, located approximately 1.5 miles southwest of the existing WWTP. The 30–acre pond would assist with effluent disposal and storage during winter months, and would facilitate on–going agricultural activities on the surrounding City–owned farmland. The expansion of the WWTP would be constructed primarily within road right–of–ways, fallow agricultural lands, and developed/ruderal areas, but would result in impacts to alkali grassland habitat. The existing WWTP is located west of the City, 0.5 miles north of Garces Highway and

along the west side of Lytle Avenue in Kern County, California.

Because of the Project's potential to take species protected by the Federal Endangered Species Act, on September 17, 2007, the U.S. Fish and Wildlife Service (Service) issued Biological Opinion 1–1–07–F–0056 to U.S. EPA Region 9, which helped fund the WWTP expansion through their Clean Water State Revolving Fund. The Biological Opinion describes the Project's actions and sets forth measures to avoid, minimize, and mitigate impacts to San Joaquin kit fox and its habitat. San Joaquin kit fox is also listed as a threatened species under the California Endangered Species Act, Fish and Game Code Section 2080 et seq. (CESA). On October 17, 2007 the Acting Director of the Department of Fish and Game (DFG) received a request from John Wankum, representing the City of Delano, that pursuant to Section 2080.1 of the Fish and Game Code, DFG find the Federal Biological Opinion consistent with CESA.

Implementation of the proposed Project will result in the permanent loss of 4.7 acres of alkali grassland and temporary impacts to 2.6 acres of alkali grassland. San Joaquin kit fox are known to occur within the project area vicinity. This habitat loss will be compensated for by the protection and management in perpetuity of 17 acres of habitat at the Kern Water Bank Conservation Bank, which is located west of Bakersfield in Kern County.

DETERMINATION

Based on the terms and conditions in Biological Opinion 1–1–07–F–0056, DFG has determined that the Biological Opinion is consistent with CESA because the Project and mitigation measures meet the conditions set forth in Fish and Game Code Section 2081(b) and (c) for authorization of incidental take of species protected under CESA. Important to DFG's findings are several measures from the Biological Opinion that address expected or potential impacts to San Joaquin kit fox. These include, but are not limited to, the following:

1. The City of Delano will compensate for permanent impacts to 4.7 acres of alkali grassland (3:1 ratio) and temporary impacts to 2.6 acres of alkali grassland (1.1:1 ratio) through the purchase of 17 credits (1 credit=1 acre) at the Kern Water Bank Authority's Conservation Bank. Acreage protected though the purchase of credits at Kern Water Bank is protected in perpetuity via conservation easements recorded in favor of DFG. The purchase price per credit includes a $375/acre endowment fee which is collected by the Kern Water Bank Authority on behalf of DFG. Collected endowment funds are transferred to DFG on an annual basis.
2. While it is the intent of the City of Delano to mitigate through the Kern Water Bank, the Biological Opinion also allows for a "stand–alone compensation parcel" that meets all the requirements defined in an attachment to the Biological Opinion called "Selected Review Criteria for Conservation Banks and Section 7 Off Site Compensation." Among these requirements are that a Conservation Easement is recorded and that the Service is a third party beneficiary, and that a management plan must be reviewed and approved by the Service and recorded with the Conservation Easement. The management plan must include a funding mechanism, schedule, and reporting for the long–term funding of the property. The funding must include a provision to adjust for the Consumer Price Index annually, and be based on an appropriate, attainable, and long–term interest rate. Endowment funds are to be held by a qualified, Service–approved non–profit organization or government agency. DFG must also approve any third–party selected to hold endowment funds for management of the compensation lands.
3. Regardless of whether compensation acreage is purchased at Kern Water Bank or another location, documentation of the compensation acreage purchase must be furnished to the Service prior to construction activities.
4. Biologists and law enforcement personnel from the Service and DFG will be given complete access to the project area to review monitoring and construction activities.
5. A pre–construction survey for natal, known, occupied, and potential San Joaquin kit fox dens will be conducted prior to ground disturbing activities. Any identified dens will be mapped to establish appropriate buffers (as specified in the Biological Opinion) during construction. In the event that a den is within an area to be impacted by construction, non–natal dens may be hand–excavated by a qualified biologist once determined to be unoccupied by the methods described in the Biological Opinion. If a den to be impacted continues to be occupied, the Service and DFG must be contacted to obtain permission

to excavate an active den while temporarily vacant.

6. All steep–walled pipeline and utility trenches will be inspected twice daily to prevent entrapment of wildlife. Escape ramps will be provided in pipeline trenches at a maximum of 2:1 slope every 500 feet and at the end of each trench. Trenches will be inspected prior to final backfilling to avoid entombment of any entrapped wildlife.
7. Any dead or injured threatened or endangered species will be reported within 48 hours to the Sacramento office of the Service and to DFG dispatch at (916) 445–0045.
8. An employee training program will be conducted prior to construction to educate all workers on identifying threatened and endangered species along with the mitigation measures and the reporting requirements of the Biological Opinion.

Pursuant to Section 2080.1 of the Fish and Game Code, no further authorization under CESA is required for incidental take of San Joaquin kit fox resulting from this Project, provided the Project is implemented as described in the Biological Opinion. If there are any substantive changes to the Project as described in the Biological Opinion, including changes to the mitigation measures, or if the Service amends or replaces the Biological Opinion, the City of Delano shall obtain a new Consistency Determination or a CESA Incidental Take Permit from the DFG.

DFG requests that the City of Delano provide copies of all annual reports, other monitoring reports, and other circulated materials relevant to the Project's effects on San Joaquin kit fox to DFG at the following address or at any substitute location that DFG may subsequently identify.

Central Region
Department of Fish and Game
1234 East Shaw Avenue
Fresno, California 93710

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
Tracking Number 2080–2007–021–01

PROJECT: Indian Creek Rehabilitation Site, Trinity River Mile 93.7 to 96.5

LOCATION: Indian Creek near Weaverville, Trinity County

NOTIFIER: Trinity County Department of Resource Management

BACKGROUND

On October 12, 2000, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) issued a "no jeopardy" Biological Opinion (BO)(151422–SWR–2000–AR8271:FR) and an incidental take statement (ITS) to the U.S. Bureau of Reclamation (BOR) which described the project actions and set forth measures to mitigate impacts to the State and Federally threatened Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*), and its Critical Habitat, and the Federally listed Central Valley steelhead (*Oncorhynchus mykiss*) and its Critical Habitat, in the area of the Indian Creek Rehabilitation Site, Trinity River Mile 93.7 to 96.5 (Project) (Note: Steelhead will not be addressed further by this Consistency Determination because this species is not listed by the State of California).

By letter dated May 15, 2006, upon request of the BOR, NMFS amended the BO to allow for heavy machinery to work within the Trinity River channel. This in–channel work was deemed necessary by BOR to carry out program goals and objectives as detailed within the Trinity River Mainstem Fishery Restoration Program Record of Decision (ROD).

The purpose of the Project is to rehabilitate salmonid habitat in the 2.8 mile Trinity River reach from River Mile 93.7 to 96.5 (the Indian Creek Rehabilitation Site) through implementation of the ROD and to allow dam operators maximum flexibility to provide instream flow releases from Lewiston Dam adequate to meet the fishery and geomorphic flow needs for the mainstem Trinity River. This project is identified in the Interior Secretary's December 19, 2000 ROD as a necessary step towards restoration of the Trinity River's fisheries and will allow for high efficiency sediment transport, to restore coldwater fishery beneficial uses and eventually remove the Trinity River from the California Clean Water Act Section 303(d) Impaired Waterbodies List. Construction is expected to begin in summer 2007 and will take approximately 2 years. Impacts to anadromous fisheries could occur due to work within the channel to build skeletal point bars, remove bottlenecks to coarse sediment delivery, and to rebuild the historic alluvial channel. Additionally, equipment will need to cross the channel at limited selected locations.

On July 17, 2007, the Director of the Department of Fish and Game (Department) received a notice from the Trinity County Department of Natural Resources, Project sponsor and partner with the BOR, pursuant to Section 2080.1 of the Fish and Game Code, requesting a determination that the issued BO, as amended, is consistent with the California Endangered Species Act (CESA) for the purposes of the Project.

The action may result in take of coho salmon, listed as threatened pursuant to the California Endangered Species Act (CESA), Fish and Game Code (FGC) Section 2050, *et seq*. The project may also result in adverse impacts to coho spawning and rearing habitat due to distribution of suspended sediment produced by project activities.

DETERMINATION

The Department has determined that Federal Biological Opinion 151422–SWR–2000–AR8271:FR, as amended by NMFS's letter dated May 15, 2006, is consistent with CESA because its terms and conditions and measures to minimize impacts meet the conditions set forth in Fish and Game Code Section 2081(b) and (c) for authorization of incidental take of species protected under CESA. Specifically, the Department finds that the take of coho salmon will be incidental to an otherwise lawful activity (i.e., restoration of the Trinity River channel to improve salmonid habitat as directed by the ROD), the terms and conditions and measures to minimize impacts required by the BO and ITS will avoid and minimize take, the creation of greatly improved habitat for juvenile coho salmon will fully mitigate the impacts of the authorized take and the project will not jeopardize the continued existence of the species. This finding is additionally made based on the letter amendment to the BO dated May 15, 2006, in which NMFS has determined that adverse effects on coho salmon from in–channel work are unlikely to be any greater than those considered by the BO because coho salmon primarily utilize tributary habitat for spawning and rearing, and construction will occur in the summer and fall period when flows are low and mainstem habitat use by juvenile coho salmon is minimal. Although NMFS has determined that turbid water from in–channel work will likely affect the small population of juvenile coho salmon which may be present by forcing fish to move incrementally further downstream than was contemplated by the BO, NMFS expects that all displaced juvenile fish will find suitable rearing habitat downstream of any project disturbances.

The terms and conditions and measures to minimize impacts required by the BO and the ITS as amended include but are not limited to the following:

1. The BOR will implement all practical measures to minimize sedimentation/turbidity in the mainstem arising from the proposed mechanical disturbances.
2. The BOR will coordinate with the NMFS, and other resource agency partners to develop construction techniques which might further reduce turbidity impacts.
3. Following completion of the ROD addressing the proposed action, BOR shall immediately implement the components of the proposed flow schedule (as described in the Trinity River Mainstem Fisheries Restoration (TRMFR) Draft Environmental Impact Statement (DEIS), page 2–19, Table 2–5) equal to or less than 6,000 CFS, and implement the entire flow schedule as soon as possible.
4. As necessary infrastructure modifications are made, BOR shall incrementally implement higher Trinity River flows (consistent with the proposed flow regime).
5. BOR shall provide two reports per year detailing flows released into the Trinity River below Lewiston Dam; reports will be provided to the NMFS (1655 Heindon Road, Arcata, CA 95521) by August 31, and March 31, annually.
6. BOR shall meet with the NMFS annually in March to coordinate during the advanced development and scheduling of habitat rehabilitation projects, including mainstem channel rehabilitation projects, sediment augmentation program, and dredging of sediment collection pools.
7. BOR shall provide for review of individual mainstem channel rehabilitation projects via the technical team ('designated team of scientists' [USFWS and BOR 2000], 'technical modeling and analysis team' [TRMFR DEIS]) or equivalent group, and provide a written recommendation to the NMFS whether the projects are similar to those described in the TRMFR DEIS and should be covered by this ITS; if the technical team determines that these projects and their impacts to aquatic habitat are substantially different than described in the TRMFR DEIS and USFWS and BOR (2000), the technical team will recommend to the NMFS that additional Federal Endangered Species Act (ESA) Section 7 consultation is appropriate.
8. BOR shall initiate emergency consultation procedures during implementation of any flood control or "safety of dam" releases, pursuant to 50 CFR §402.05.
9. BOR shall be prepared to make use of the auxiliary bypass outlets on Trinity Dam as needed, and pursuant to re–initiation of ESA Section 7 consultation regarding Sacramento River Winter–run Chinook salmon, to protect water quality standards; associated actions may include

modification of the export schedule of Trinity Basin diversions to the Sacramento River.

10. BOR should make every effort to ensure that the entire Mainstem Trinity River Restoration Program is funded and implemented.

Pursuant to Section 2080.1 of the Fish and Game Code, no incidental take authorization under CESA will be required for incidental take of coho salmon during the project as it is described in the BO, as amended, provided Trinity County, on behalf of the BOR, complies with the mitigation measures and other conditions described in the BO. If there are any substantive changes to the project including changes to the mitigation measures or if NOAA Fisheries further amends the BO, Trinity County will be required to obtain a new consistency determination or incidental take authorization pursuant to CESA from the Department.

DEPARTMENT OF HEALTH CARE SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES INTENT TO REVISE THE DEFINITION OF A BILLABLE VISIT FOR FEDERALLY QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS

This notice is being given to provide information of public interest with respect to a recent amendment to California law that revises the definition of a "billable visit" for services rendered to Medi–Cal beneficiaries by a Federally Qualified Health Center (FQHC) or a Rural Health Clinic (RHC). The revised definition of a "billable visit" is to be effective January 1, 2008 for applicable FQHCs and RHCs pursuant to newly enacted mandates in section 14132.100 of the Welfare and Institutions Code. It is the intent of the California Department of Health Care Services (CDHCS) to submit an amendment to California's Medicaid State Plan to revise the definition of a "billable visit" for an FQHC or a RHC.

REVISION OF A BILLABLE VISIT FOR SERVICES RENDERED BY FQHCs AND RHCs

The amendment to the California State Plan will include language to add dental hygienist or dental hygienist in alternative practice to the list of professionals whose services can be reimbursed as a "billable visit". FQHCs or RHCs that choose to have dental hygienist or dental hygienist in alternative practice services reimbursed as a "billable visit" will be reimbursed for those visits under the Prospective Payment System reimbursement methodology.

Some of the key provisions of the state plan amendment are as follows:

- A "billable visit" shall also include face–to–face encounters between an FQHC or RHC patients and a dental hygienist or dental hygienist in alternative practice.
- Multiple encounters with dental professionals that take place on the same day shall constitute a single visit.
- An FQHC or RHC that currently includes the cost of a dental hygienist or a dental hygienist in alternative practice in their per–visit reimbursement rate shall apply for a rate adjustment.
- Any approved reimbursement rate adjustment shall not be effective prior to January 1, 2008.
- An FQHC or RHC that does not provide dental hygienist or dental hygienist in alternative practice services and later elects to add these services shall submit a request to CDHCS for a change in scope–of–services.

PUBLIC REVIEW

The proposed amendment to the California State Plan, which details the changes discussed above, is available for public review at local county welfare offices throughout the State. In addition, copies of this notice may be requested and written comments may be submitted to:

Marie Taketa, Chief, Rate Analysis Unit
Department of Health Care Services
1501 Capitol Avenue, MS 4612
P.O. Box 997417
Sacramento, CA 95899–7417

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

California Environmental Protection Agency
Office of Environmental Health Hazard Assessment

November 30, 2007

Notice of the Availability of an Evaluation Report on Dieldrin

The Office of Environmental Health Hazard Assessment (OEHHA) is required under Health and Safety

Code Section 901(g) (Section) to identify those chemical contaminants commonly found at school sites and determined by OEHHA to be of greatest concern based on child–specific physiological sensitivities. The Section also requires OEHHA to evaluate and publish, as appropriate, numerical health guidance values, such as child–specific reference doses (chRDs), for these chemical contaminants.

OEHHA has identified dieldrin as a contaminant of concern pursuant to the Section. In an updated review of available literature, OEHHA has found additional information that exposure to dieldrin during the childhood neurological developmental period could irreversibly impact the system of nerve cells that use dopamine as its neurotransmitter, contributing to an early onset of Parkinson's disease. While this developmental neurotoxicity may be a very sensitive endpoint, available data do not permit a determination of the lowest dose for this effect. Accordingly, OEHHA is not proposing a chRD for dieldrin. Instead, OEHHA recommends the use of the U.S. Environmental Protection Agency's reference dose, or the Agency for Toxic Substances and Disease Registry's minimal risk level, both of which have a value of $5x10^{-5}$ mg/kg–day, in assessing the non–cancer risk of dieldrin at school sites. This chronic reference dose is based on liver toxicity of dieidrin.

The document is considered a status report on dieldrin's potential to impact children at very low doses. Because this evaluation did not lead to a new quantitative assessment of dieldrin's toxicity, it did not undergo external peer review or public review. Should new information be obtained that leads to a quantitative risk assessment of the chemical, that assessment will undergo the necessary and required reviews before being released.

This report is available to the public via the OEHHA Web site at
http://www.oehha.ca.gov/public_info/public/kids/chrds.html.

If you have any questions, please contact Dr. David Chan at (916) 327–0606, E–mail at dchanl@oehha.ca.gov, or by mail at:

Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS–12B
Sacramento, CA 95812–4010

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

Notice to Interested Parties
November 30, 2007

Announcement of a Public Comment Period and Public Workshop

Public Comments on the Child–Specific Reference Dose (chRD) for Chlorpyrifos for Use in Assessing Health Risks at Existing and Proposed School Sites

The Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency is making available the draft report, "Development of Health Criteria for School Site Risk Assessment Pursuant to Health and Safety Code Section 901(g): PROPOSED CHILD–SPECIFIC REFERENCE DOSE (chRD) FOR SCHOOL SITE RISK ASSESSMENT, CHLORPYRIFOS," on November 30, 2007. Section 901(g) requires OEHHA to evaluate and publish, as appropriate, numerical health guidance values or chRDs for those chemicals that would be encountered at school sites and adversely impact school children. Public review and comment periods for this document will follow the requirements set forth in Health and Safety Code Section 57003 for receiving public input. The comment period will end on January 18, 2008. Comments received by that date will be considered in revision of the document. A workshop on the document will be held from 1:30 p.m. to 3:30 p.m. on December 20, 2007, in the Coastal Hearing Room on the second floor of the Joe Serna (Cal/EPA headquarters) Building, 1001 I Street, Sacramento. On a parallel track, OEHHA will be seeking comments from an external peer review panel of experts.

This report is available to the public via the OEHHA Web site at
http://www.oehha.ca.gov/public_info/public/kids/chrds.html

If you would like to receive further information on this announcement or have questions, please contact our office at (916) 324–2829 or the address below. Written requests or comments should be addressed to:

Mr. Leon Surgeon
Integrated Risk Assessment Branch
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS–12B
1001 I Street
Sacramento, California 95812–4010
FAX: (916) 322–9705

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

California Environmental Protection Agency
Office of Environmental Health Hazard Assessment

November 30, 2007

Notice of the Availability of an Evaluation Report on Malathion

The Office of Environmental Health Hazard Assessment (OEHHA) is required under Health and Safety Code Section 901(g) (Section) to identify those chemical contaminants commonly found at school sites and determined by OEHHA to be of greatest concern based on child–specific physiological sensitivities. The Section also requires OEHHA to evaluate and publish, as appropriate, numerical health guidance values, such as child–specific reference doses (chRDs), for these chemical contaminants.

OEHHA has identified malathion as a contaminant of concern pursuant to the Section. In an updated review of available literature, OEHHA has found additional information that indicates the immune system could be a very sensitive target of malathion and this chemical could potentially impact children at very low, non–cholinergical doses (doses that do not result in overt neurotoxicity from cholinesterase inhibition). However, there is insufficient information to derive a chRD based on the immune endpoint. The U.S. Environmental Protection Agency (U.S. EPA) is requiring the registrant to develop additional immunotoxicity data as part of the re–registration process. When the immunotoxicity data become available, OEHHA will review and determine the applicability of those data to establish a chRD. In the interim, we recommend that the chronic reference dose of 0.003 mg/kg–day for malathion developed by the U.S. EPA's Office of Pesticide Programs be used for assessing health risk at school sites. This chronic reference dose is based on the inhibitory effects of malathion on red blood cell and blood plasma cholinesterase enzymes.

The document is considered a status report on malathion's potential to impact children at very low non–cholinergical doses. Because this evaluation did not lead to a new quantitative assessment of malathion's toxicity, it did not undergo external peer review or public review. Should new information be obtained that leads to a quantitative risk assessment of the chemical, that assessment will undergo the necessary and required reviews before being released.

This report is available to the public via the OEHHA Web site at
http://www.oehha.ca.gov/public_info/public/kids/chrds.html.

If you have any questions, please contact Dr. David Chan at (916) 327–0606, E–mail at dchanl@oehha.ca.gov, or by mail at:

Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS–12B
Sacramento, CA 95812–4010

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE TO INTERESTED PARTIES November 30, 2007

DECEMBER 10, 2007 MEETING OF THE SCIENCE ADVISORY BOARD'S DEVELOPMENTAL AND REPRODUCTIVE TOXICANT IDENTIFICATION COMMITTEE

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

The Developmental and Reproductive Toxicant Identification Committee (DARTIC) of OEHHA's Science Advisory Board identifies chemicals for addition to the list of chemicals known to the State to cause re-

productive toxicity, which is mandated by Health and Safety Code Section 25249.8. The Committee serves as the "State's qualified experts" for determining whether a chemical has been clearly shown, through scientifically valid testing according to generally accepted principles, to cause reproductive toxicity.

A public meeting of this committee will be held on **Monday, December 10, 2007** at the California Environmental Protection Agency Headquarters Building, ***Byron Sher Auditorium***, at 1001 I Street, Sacramento, California, beginning at 10:00 a.m. and continuing until all business has been conducted, or 5:00 p.m. If you have special accommodation or language needs, please contact Cynthia Oshita at (916) 445–6900 or coshita@oehha.ca.gov by December 3, 2007. TTY/TDD/Speech–to–Speech users may dial 7–1–1 for the California Relay Service.

The tentative agenda for this meeting is as follows. It should be noted that the order of items on the agenda is provided for general reference only. The order in which items are taken up by the Committee is subject to change at the discretion of the Chair. Because we anticipate a significant amount of public participation on these agenda items, please contact Cynthia Oshita at (916) 445–6900 or coshita@oehha.ca.gov by December 3, 2007, if you want to verbally provide your comments to the Committee.

Information and materials related to the meeting are posted on the OEHHA web site at http://www.oehha.ca.gov/prop65.html. Please check this site periodically for updates.

I. WELCOME AND OPENING REMARKS

II. PRIORITIZATION OF CHEMICALS FOR DEVELOPMENTAL AND REPRODUCTIVE TOXICANT IDENTIFICATION COMMITTEE REVIEW:

A. PROCESS OVERVIEW AND APPLICATION OF EPIDEMIOLOGIC DATA SCREEN
- Staff presentation

B. RESULTS OF THE EPIDEMIOLOGIC DATA SCREEN

1. Bisphenol A
- Staff presentation
- Committee discussion
- Public comments
- Committee discussion and advice and consultation regarding possible development of hazard identification materials

2. Bromodichloromethane
- Staff presentation
- Committee discussion
- Public comments
- Committee discussion and advice and consultation regarding possible development of hazard identification materials

3. Caffeine
- Staff presentation
- Committee discussion
- Public comments
- Committee discussion and advice and consultation regarding possible development of hazard identification materials

4. Chlorpyrifos
- Staff presentation
- Committee discussion
- Public comments
- Committee discussion and advice and consultation regarding possible development of hazard identification materials

5. Chromium (Hexavalent)
- Staff presentation
- Committee discussion
- Public comments
- Committee discussion and advice and consultation regarding possible development of hazard identification materials

6. DDE
- Staff presentation
- Committee discussion
- Public comments
- Committee discussion and advice and consultation regarding possible development of hazard identification materials

7. Methylisocyanate
- Staff presentation
- Committee discussion
- Public comments
- Committee discussion and advice and consultation regarding possible development of hazard identification materials

8. Sulfur Dioxide
- Staff presentation
- Committee discussion
- Public comments
- Committee discussion and advice and consultation regarding possible

development of hazard identification materials

9. Other Chemicals Proposed for Committee Consideration
   - Committee input and discussion
   - Public input and comments
   - Committee discussion and advice and consultation regarding possible development of hazard identification materials

III. DISCUSSION OF NEXT PRIORITIZATION DATA SCREEN
   - Staff presentation
   - Committee discussion
   - Public comments
   - Committee discussion and advice regarding next prioritization data screen

IV. STAFF UPDATES

V. SUMMARY OF COMMITTEE ADVICE AND CONSULTATION

RULEMAKING PETITION DECISIONS

DEPARTMENT OF HEALTH CARE SERVICES

November 16, 2007

John R. Valencia, Esq.
Wilke, Fleury, Hoffelt, Gould, and Birney, LLP
Twenty–Second Floor
400 Capitol Mall
Sacramento, Ca 95814

Re: Request for Reconsideration of Petition for Rule Making for the Genetically Handicapped Persons Program (GHPP)

Dear Mr. Valencia:

The Department of Health Care Services is in receipt of your request dated November 5, 2007, made in accordance with Section 11340.7(c) of the Government Code, that the Department reconsider its September 14, 2007, denial of your petition for rule making dated August 17, 2007, made on behalf of unspecified persons in California with glycosaminoglican deposition or mucopolysaccharidosis (MPS) diseases. Your petition requested that the Department amend Section 2932 of Title 22 of the California Code of Regulations to include MPS diseases in the list of genetically handicapping conditions eligible for services through the GHPP. The Department's denial of your petition was published in the California Regulatory Notice Register 2007, Volume No. 40–Z.

The Department does not have funding in the GHPP Budget Act General Fund appropriation for the 2007–08 fiscal year to cover the cost of comprehensive health care coverage, including coverage for the treatment of MPS, that would result from enrollment of persons with MPS diseases in GHPP. The Department is not aware of any service reduction that might offset the cost of providing GHPP services to such persons nor any other means of financing such services. The State of California faces a projected General Fund budget shortfall for the 2008–09 fiscal year in excess of 10 billion dollars. Thus, the Department is not aware of any plausible scenario for funding MPS diseases as a GHPP eligible condition in that fiscal year.

Therefore, in accordance with the provisions of Section 11340.7 of the Government Code, the Department has determined that reconsideration of its September 14, 2007, denial of your petition is not warranted. The Department's decision on your request for reconsideration will be transmitted to the California Office of Administrative Law for publication in the California Regulatory Notice Register.

If you have any questions, please contact Harvey Fry, Assistant Chief, Children's Medical Services Branch at (916) 327–2435.

Sincerely,

Original Signed by Marian Dalsey, M.D., M.P.H

Marian Dalsey, M.P.H., M.D.,
Chief Children's Medical Services Branch

cc: Luis Rico, Chief
Systems of Care Division
Department of Healthcare Services
1501 Capitol Avenue
Sacramento, Ca 95814

Sharon Stevenson, Chief Counsel
Department of Healthcare Services
MS 0011
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Lynette Cordell, Chief
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MS 0015
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OAL REGULATORY DETERMINATIONS

DEPARTMENT OF HEALTH CARE SERVICES

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS

(Pursuant to Government Code Section 11340.5 and Title 1, section 270, of the California Code of Regulations)

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

2007 OAL DETERMINATION NO. 23 (OAL FILE # CTU 07–0530–01)

REQUESTED BY: **P. Dennis Mattson, Ph.D.**

CONCERNING: **DEPARTMENT OF HEALTH CARE SERVICES — TABLES USED TO DETERMINE ADMINISTRATOR COMPENSATION.**

DETERMINATION ISSUED PURSUANT TO GOVERNMENT CODE SECTION 11340.5.

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a "regulation" as defined in Government Code section 11342.600. If a rule meets the definition of a "regulation" but was not adopted pursuant to the Administrative Procedure Act (APA) and should have been, it is an "underground regulation" as defined in the California Code of Regulations, title 1, section 250. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

ISSUE

On May 30, 2007, Dr. P. Dennis Mattson submitted a petition to the Office of Administrative Law (OAL), alleging that the California Department of Health Care Services (DHCS) (formerly the Department of Health Services)[1] employs an underground regulation in violation of Government Code section 11340.5.[2] The alleged underground regulation is the four Administrator Compensation Tables (Tables) developed by DHCS to determine administrator compensation for Intermediate Care Facilities for the Developmentally Disabled, Habilitative or Nursing (ICF DDH or ICF DDN) funded through the Medi–Cal program. The Tables list ranges of allowable administrator compensation based on geography and facility type and are used to audit the compensation claimed by the facilities.

DETERMINATION

OAL determines that the Tables meet the definition of a "regulation" as defined in section 11342.600 and that they should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

Congress established the Medicaid Program in Title XIX of the Social Security Act. The program was designed to provide medical assistance to families that meet income and resources qualifications. In California, this plan has been implemented as the Medi–Cal program.[3] Intermediate Care Facilities for the Developmentally Disabled, Habilitative or Nursing (ICF DDH or ICF DDN) are small homes licensed by DHCS and funded through the Medi–Cal program. Each year these homes submit cost reports to DHCS. DHCS audits a statistical sample of these cost reports at random to verify that they contain allowable expenses. DHCS uses the Tables to determine permissible administrator compensation when auditing these homes.

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[1] Health and Safety Code section 100100: "There is in the state government in the California Health and Human Services Agency, a State Department of Health Services which, effective July 1, 2007, is hereby renamed the State Department of Health Care Services. . . ."

[2] Unless specified otherwise code references are to the California Government Code.

[3] DHCS' Response to Petition Alleging Guidelines to Determine Administrator Compensation Are Underground Regulations, p. 2.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA. It states as follows:

> (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation. "Underground regulation" is defined in Title 1, California Code of Regulations, section 250, as follows:

> "Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

OAL may issue a determination as to whether or not an agency issues, utilizes, enforces, or attempts to enforce a rule that meets the definition of a "regulation" as defined in section 11342.600 and should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference" in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244.

To determine whether an agency issues, utilizes, enforces, or attempts to enforce an underground regulation in violation of section 11340.5, it must be demonstrated that the agency rule is a regulation not adopted pursuant to the APA and not exempt from the APA.

ANALYSIS

A determination of whether the challenged rule is a "regulation" subject to the APA depends on (1) whether the challenged rule contains a "regulation" within the meaning of section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in section 11342.600 as:

> . . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571, the California Supreme Court found that:

> A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. The Tables in question here apply to all ICF DDHs and ICF DDNs in California that are audited by DHCS. As *Tidewater* pointed out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. The Tables apply to such a clearly identified class of persons. The first element is, therefore, met.

The second element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure. Welfare and Institutions Code section 14105(a) provides clear authority to DHCS to adopt regulations implementing the Medi–Cal Act.[4] The Tables are used to perform audits necessary to validate Medi–Cal reimbursement. During an audit, the Tables are used to determine whether an ICF DDH's or ICF DDN's administrator compensation claim falls within the established ranges. The Tables are used to set the range of allowable payments to these homes. The Tables are clearly essential to the issue of administrator compensation and Medi–Cal reimbursement and therefore, implement, in-

[4] Welfare and Institutions Code section 14105 provides: "(a) The director shall prescribe the policies to be followed in the administration of this chapter, [CH. 7. Basic Health Care] may limit the rates of payment for health care services, and shall adopt any rules and regulations as are necessary for carrying out, but are not inconsistent with, the provisions thereof. . ."

terpret or make specific the Medi–Cal Act. The second element in the *Tidewater* case is met.

The final issue to examine in determining whether DHCS has created an underground regulation by issuing the Tables is determining if there is an exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies.[5] Exemptions may also be specific to a particular rulemaking agency or a specific program.

OAL notes that Welfare and Institutions Code section 14126.027 allows DHCS to promulgate rules relating to Medi–Cal until July of 2008 through the issuance of provider bulletins or similar instructions.[6] However, DHCS has not cited this provision to establish an exemption for the Tables, and DHCS has not provided OAL with any evidence that it sent a provider bulletin or similar instructions regarding the Tables.

AGENCY RESPONSE

In its reply to the petition, DHCS argues:

1. The Tables used by DHCS do not meet the definition of a regulation; or alternatively,
2. The adoption of the Tables would be duplicative of current federal regulations and thus are not required to be adopted as regulations.

DHCS, in their first argument, asserts that the Tables are not general rules that apply uniformly to a class. In support of this argument, DHCS cites *Modesto City Schools v. Education Audits Appeal Panel* (2004) 123 Cal.App.4th 1365. In *Modesto City Schools,* the court found that the use of the challenged audit guideline was discretionary and was therefore not a rule of general application. *Modesto City Schools* is distinguishable from the Tables at issue in this determination. The audit guide in *Modesto City Schools* was created in response to a statute which stated, "For each state program compliance requirement included in the audit guide, every audit report shall further state that the ***suggested*** audit procedures included in the audit guide for that requirement were followed in the making of the audit, if that is the case, or, ***if not, what other procedures were followed."*** (Emphasis added) *Ibid*, 1382. This language clearly indicates that the audit guide was not a rule of general application because, by statute, it was merely a suggestion.

In the instant case, there is no such language either in a statute or within the Tables themselves. The DHCS' State Plan Amendment (SPA)[7] No. 01–022 states,

> For purposes of determining reasonable compensation of facility administrators, pursuant to Chapter 9 of the CMS Provider Reimbursement Manual (HIM 15) — reproduced in full at Paragraph 5577 of the CCH Medicare and Medicaid Guide, the State shall conduct its own survey. Based on the data collected from such surveys, the State shall develop compensation range tables for the purpose of evaluating facility administrator compensation during audits of those facilities.

This clearly indicates that the Tables are required to be used in every audit of the facilities.

In its response, DHCS also contends that the auditors have discretion to accept reported costs outside of the ranges listed in the Tables. DHCS argues that this discretion is evidence that the Tables are not a standard of general application and do not meet the definition of a "regulation." As proof of this discretion, DHCS included several Declarations from DHCS employees. However, rather than establishing that the Tables are not

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[5] See Government Code section 11340.9.

[6] Welfare and Institutions Code section 14126.027 provides: (a) (1) The Director of Health Services, or his or her designee, shall administer this article [Article 3.8. Medi–Cal Long–Term Care Reimbursement Act].
(2) The regulations and other similar instructions adopted pursuant to this article shall be developed in consultation with representatives of the long–term care industry, organized labor, seniors, and consumers.
(b) (1) The director may adopt regulations as are necessary to implement this article. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action.
(2) The regulations adopted pursuant to this section may include, but need not be limited to, any regulations necessary for any of the following purposes:
(A) The administration of this article, including the specific analytical process for the proper determination of long–term care rates.
(B) The development of any forms necessary to obtain required cost data and other information from facilities subject to the rate-setting methodology.
(C) To provide details, definitions, formulas, and other requirements.
(c) As an alternative to the adoption of regulations pursuant to subdivision (b), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2008. It is the intent that regulations adopted pursuant to subdivision (b) shall be in place on or before July 31, 2008. (Emphasis added)

[7] 42 CFR 400.203: ". . .State plan or the plan means a comprehensive written commitment by a Medicaid agency, submitted under section 1902(a) of the Act, to administer or supervise the administration of a Medicaid program in accordance with Federal requirements. . ."

a rule of general application, the Declarations provide further evidence that the Tables are, in fact, a rule of general application.

The Declarations include the following statements:

- "The administrator compensation tables developed by FAB (Financial Audits Branch) are used as guidelines when an auditor goes to a facility to audit a cost report." (Declaration of David Botelho, Exhibit C, p. 4)
- ". . .the general rule is to evaluate the amount reported for administrator compensation including to determine if it the total reported compensation is within the guidelines in the applicable administrator compensation table." (sic) (Declaration of Michael Alan Harrold, Exhibit D, p. 1)
- "These tables are used by Department auditors in conducting audits of these facilities." (Declaration of Daniel J. Giardinelli, Exhibit E, p. 1)
- "The Administrator Compensation tables are necessary to reasonably determine the amount of allowable compensation that would be allowed. . . ." (Declaration of Gary R. Molohan, Exhibit F, p. 1–2)

These statements establish the application of the Tables as the uniform first step in each audit of administrator compensation.

Several of the Declarations also claim that an exception to the Tables exists in "extraordinary circumstances" (Exhibit D, p. 2) and "extenuating circumstances" (Exhibit E, p. 2). Only one says the auditor has discretion to accept a higher amount (Exhibit C, p. 5). The rest of the Declarations indicate that approval of a higher amount would be required to allow this exception. There is no consensus as to who has approval authority.

These Declarations make it very clear that these Tables *are* rules of general application because the Tables are used in every case to determine the administrator's compensation. An exception is carved out when there are "extraordinary circumstances" and "extenuating circumstances." However, making an exception to the application of a general rule does not make the general rule discretionary.

Furthermore, the use of the Tables closely mirrors *Grier v. Kizer*, *supra*, 219 Cal.App.3d 422, where the court held that a statistical method used to audit claims for payment of Medi–Cal providers was an implementation of the department's statutory auditing authority that affected Medi–Cal providers statewide. For these reasons, OAL finds that the Tables are a rule of general application and meet the definition of a regulation.

DHCS argues alternatively that the adoption of the Tables would violate the APA standard of nonduplication.[8] DHSC argues that the metholology and factors are set out in the federal regulations and it would be duplicative to adopt these into the California Code of Regulations. Section 11349.1, subdivision (a)(6) requires that OAL review all regulations for compliance with the nonduplication standard. Section 11349, subdivision (f), provides, in part, as follows:

> 'Nonduplication' means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

If the Tables were in fact duplicative of federal regulations then DHCS would not be required to adopt them as a regulation. Pursuant to *Engelmann v. State Bd. Of Education (1991) 3 Cal.Rptr.2d 264*, regulations governing procedures and criteria do not have to be enacted as regulations if they merely reiterate language in a statute. In the present situation, the federal regulations contain information regarding audits, but the federal regulations do not contain either the Tables or the criteria used to develop the Tables. The Tables, therefore, do not duplicate any federal regulations.

CONCLUSION

The Tables meet the definition of a "regulation" as defined in section 11342.600, and they should have been adopted pursuant to the APA.

Date: November 19, 2007

/s/
Peggy J. Gibson
Staff Counsel

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[8] DHCS also argues that adoption of the Tables as a regulation would "be unduly and unnecessarily duplicative to set out the federal requirements, definitions and standards in a state regulation when these requirements, definitions and standards already exist in federal law. . .", and would not therefore meet the necessity standard in section 11349(a). This is not a correct application of the necessity standard pursuant to section 11349(a).

/s/
Susan Lapsley
Director

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323–6225

AVAILABILITY OF INDEX OF PRECEDENTIAL DECISIONS

DEPARTMENT OF INSURANCE

CALIFORNIA INSURANCE COMMISSIONER
PRECEDENTIAL DECISIONS AND
DECISION INDEX

Notice of Availability of Precedential Decisions and Decision Index

Re: Government Code section 11425.60

NOTICE IS HEREBY GIVEN that the California Insurance Commissioner, pursuant to the requirements of section 11425.60 of the Government Code, maintains an index of precedent decisions. The index is available to the public by annual subscription from the California Department of Insurance's Administrative Hearing Bureau 45 Fremont Street, 22nd Floor, San Francisco, California 94105. The index and the text of the decisions can be viewed by appointment at the California Department of Insurance's Administrative Hearing Bureau at the above address. Please call (415) 538–4102 or (415) 538–4251 for an appointment. The index and text of the decisions also can be viewed on the Internet at: http://www.insurance.ca.gov under the sections entitled, Insurers/Legal Information/Decisions and Rulings/Precedential Decisions.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653–7715. Please have the agency name and the date filed (see below) when making a request.

File# 2007–1009–04
BOARD OF BARBERING AND COSMETOLOGY
Schedule of Fees

This regulatory action increases specified fees for barbers, cosmetologists, estheticians, manicurists and electrologists. Please note that the Board withdrew proposed footnotes 3 and 4 from the regulatory text and reserved the right to resubmit on or before April 6, 2008.

Title 16
California Code of Regulations
AMEND: 998
Filed 11/21/2007
Effective 12/21/2007
Agency Contact: April Oakley (916) 575–7102

File# 2007–1005–02
BOARD OF EDUCATION
Math and Reading Professional Development Program

This action updates and provides more detail in the regulations that implement the mathematics and reading, and English language learner professional development programs, which provide funds for local education agencies to pay for professional development of teachers.

Title 5
California Code of Regulations
ADOPT: 11981.3, 11984.5, 11984.6, 11985, 11985.5, 11985.6 AMEND: 11981 (renumber to 11980), 11982 (renumber to 11981), 11985 (renumber 11981.5), 11980 (renumber to 11982), 11986 (renumber to 11982.5), 11983, 11983.5, 11984
Filed 11/19/2007
Effective 12/19/2007
Agency Contact: Debra Strain (916) 319–0860

File# 2007–1009–01
BOARD OF EQUALIZATION
Seizures and Forfeitures

In March, 2007, the State Board of Equalization adopted sections 4500–4703 of Title 18, concerning the Seizures of Tobacco products, effective 4/21/07. This amendment is to provide further clarification with respect to exclusions for licensed distributors.

Title 18
California Code of Regulations
AMEND: 4703
Filed 11/21/2007
Effective 12/21/2007
Agency Contact: Mira Tonis (916) 319–9518

File# 2007–1009–03
BOARD OF PHARMACY
Fee Schedule

This action adopts fee increases for a variety of licensing, examination, and renewal fees assessed by the Board of Pharmacy.

Title 16
California Code of Regulations
AMEND: 1749
Filed 11/19/2007
Effective 01/01/2008
Agency Contact: Anne Sodergren (916) 445–5014

File# 2007–1012–03
CALIFORNIA GAMBLING CONTROL COMMISSION
Interim Key Employee Status While Application Pending

Amendment to Title 4 California Code of Regulations to adopt section 12347 relating to interim key employee status. The proposed adoption of this regulation creates an "interim" status for key employees of non–corporation owned gambling facilities to begin work in a gambling establishment under certain circumstances.

Title 4
California Code of Regulations
ADOPT: 12347
Filed 11/21/2007
Effective 12/21/2007
Agency Contact:
Heather Cline–Hoganson (916) 274–6328

File# 2007–1003–01
DEPARTMENT OF DEVELOPMENTAL SERVICES
Respite Care Rate Increase

This regulatory action increases the maximum reimbursement rate for in–home respite workers and respite facilities providing respite services to $10.12 per consumer per hour, effective January 1, 2007.

Title 17
California Code of Regulations
AMEND: 57310, 57332
Filed 11/16/2007
Effective 11/16/2007
Agency Contact: Mayra Jimenez (916) 654–1608

File# 2007–1009–02
DEPARTMENT OF FOOD AND AGRICULTURE
Japanese Beetle Eradication Area

This regulatory action is the certificate of compliance for establishing Orange County as an area of eradication for the Japanese beetle (Popillia japonica).

Title 3
California Code of Regulations
AMEND: 3589
Filed 11/14/2007
Effective 11/14/2007
Agency Contact: Stephen Brown (916) 654–1017

File# 2007–1004–01
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Eradication Area

In this Certificate of Compliance regulatory action, the Department of Food and Agriculture amends its regulation pertaining to the "Light Brown Apple Moth Eradication Area" to add the counties of Los Angeles and Solano to the list of counties subject to eradication measures for this pest.

Title 3
California Code of Regulations
AMEND: 3591.20
Filed 11/14/2007
Effective 11/14/2007
Agency Contact: Stephen Brown (916) 654–1017

File# 2007–1002–02
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This is the certification of five emergency rulemaking actions (OAL file numbers: 07–0417–04 E, 07–0604–02 E, 07–0606–01 E, 07–0619–07 E and 07–0713–01 E). On May 2, 2007, the USDA issued a Federal Domestic Quarantine Order for LBAM which restricts the interstate movement of host commodities produced in the counties of Alameda, Contra Costa, Marin, Monterey, Santa Cruz, Santa Clara, San Francisco and San Mateo with respect to the light brown apple moth (LBAM; Epiphyas postvittana). This order now applies to all infested California counties. The emergency adoption and subsequent emergency amendments were necessary to conform the State's regulation (Title 3, section 3434) to the federal order.

Title 3
California Code of Regulations
AMEND: 3434
Filed 11/15/2007
Effective 11/15/2007
Agency Contact: Stephen Brown (916) 654–1017

File# 2007–1114–02
DEPARTMENT OF FOOD AND AGRICULTURE
Mexican Fruit Fly Interior Quarantine

This emergency regulatory action establishes approximately 78 square miles in the Escondido area of San Diego County as a quarantine area for the Mexican fruit fly.

Title 3
California Code of Regulations
AMEND: 3417(b)
Filed 11/16/2007
Effective 11/16/2007
Agency Contact: Stephen Brown (916) 654–1017

File# 2007–1119–02
DEPARTMENT OF FOOD AND AGRICULTURE
Diaprepes Root Weevil Interior Quarantine

This emergency regulatory action will amend section 3433(b) of Title 3, to modify the boundary amendments for the interior quarantine established for the Diaprepes root weevil (Diaprepes abbreviatus). The current quarantine encompasses parts of Los Angeles, Orange, and San Diego counties. This proposed emergency modifies the Encinitas, Rancho Santa Fe and Scripps Ranch quarantine areas in San Diego County.

Title 3
California Code of Regulations
AMEND: 3433(b)
Filed 11/21/2007
Effective 11/21/2007
Agency Contact: Stephen Brown (916) 654–1017

File# 2007–1107–01
DEPARTMENT OF INSURANCE
California Low Cost Automobile Insurance Program Rates

This is an emergency regulatory action that establishes the uniform rates for the liability policy, uninsured motorists and medical payments coverage under the California Low Cost Automobile Insurance Program for the following counties: Alpine, Colusa, Del Norte, Glenn, Inyo, Lassen, Mariposa, Modoc, Mono, Nevada, Plumas, San Luis Obispo, Sierra, Siskiyou, Tehama, and Trinity. The California Low Cost Automobile Insurance Program is a statutorily required plan for equitable apportionment among insurers required to participate in the California Automobile Assigned Risk Plan (CAARP) for persons residing in the specified counties who are eligible to purchase a low cost automobile insurance policy through the program established in those counties. The establishment of the rates for the program in these sixteen counties is exempt from the APA and OAL's review pursuant to Government Code section 11340.9, subdivision (g); however, the expansion of the program into these sixteen designated counties by emergency regulatory action is subject to the APA and OAL review. Insurance Code section 11629.79, subdivision (c), provides that the adoption of these regulations on an emergency basis "shall be considered by the [OAL] to be necessary for the immediate preservation of the public peace, health and safety, and general welfare."

Title 10
California Code of Regulations
AMEND: 2498.6
Filed 11/15/2007
Effective 12/10/2007
Agency Contact:
Mary Ann Shulman (415) 538–4133

File# 2007–1031–01
EMPLOYMENT DEVELOPMENT DEPARTMENT
Conflict of Interest Code

The Employment Development Department is amending section 311–1, title 22, California Code of Regulations, pertaining to their conflict of interest code. The amendment was approved for filing by the Fair Political Practices Commission on October 9, 2007.

Title 22
California Code of Regulations
AMEND: 311–1
Filed 11/20/2007
Effective 12/20/2007
Agency Contact: Laura Colozzi (916) 654–7712

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN JUNE 20, 2007 TO NOVEMBER 21, 2007

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

07/09/07	AMEND: 270
06/28/07	AMEND: 2616

Title 2

10/31/07	ADOPT: 18200
10/30/07	AMEND: 1138.10, 1138.30, 1138.72, 1138.90
10/17/07	ADOPT: 2970
10/15/07	ADOPT: 2291, 2292, 2293, 2294, 2295, 2296
10/09/07	AMEND: 1896.98, 1896.99.100, 1896.99.120
10/03/07	ADOPT: 1859.167.2, 1859.167.3 AMEND: 1859.2, 1859.163.3, 1859.167 REPEAL: 1859.167.1

10/01/07 ADOPT: 1859.71.6, 1859.77.4 AMEND: 1859.2
09/24/07 ADOPT: 18420.5
09/24/07 ADOPT: 18361 AMEND: 18360, 18361.7
09/20/07 ADOPT: 18466
09/20/07 REPEAL: 18530.9
09/11/07 ADOPT: 18440
09/10/07 AMEND: 1183.13
09/04/07 ADOPT: 54700
08/31/07 ADOPT: 1859.180, 1859.181, 1859.182, 1859.183, 1859.184, Form SAB 50–11 AMEND: 1859.2, 1859.51, 1859.61, 1859.75.1, 1859.81, 1859.81.1, 1859.81.2, 1859.103, 1859.104, 1859.202, 1866, Form SAB 50–04, Form SAB 50–06
08/31/07 AMEND: 18109, 18204.5, 18208.5, 18215.2, 18228, 18236, 18241, 18306, 18315, 18323, 18325, 18350, 18404.2, 18410, 18416, 18429, 18432, 18438, 18457, 18500, 18502, 18502.1, 18502.2, 18519.4, 18522, 18526.1, 18530.1, 18531.1, 18531.3, 18531.4, 18532, 18536.1, 18536.2, 18538, 18538.2, 18541, 18564, 18573, 18580, 18585, 18586, 18587, 18588, 18590, 18616.5, 18618, 18619, 18620, 18621, 18622, 18626, 18650, 18700.1, 18702.6, 18704.3, 18707.3, 18720, 18725, 18726, 18726.1, 18726.2, 18726.3, 18726.4, 18726.5, 18726.6, 18726.7, 18726.8, 18727, 18760, 18902, 18930.1, 18931, 18935, 18940.1, 18950.2, 18954
08/03/07 AMEND: 58800
08/02/07 ADOPT: 1700
07/18/07 AMEND: 1859.2, 1859.51, 1859.61, 1859.81, 1859.202, 1866
07/18/07 AMEND: 18361.2, 18361.4
07/18/07 ADOPT: 7288.0, AMEND: 7288.0, 7288.1, 7288.2, 7288.3
07/17/07 AMEND: 1859.2
07/02/07 ADOPT: 18531.62 AMEND: 18544, 18545
07/02/07 ADOPT: 1859.302, 1859.324.1, 1859.330 AMEND: 1859.302, 1859.318, 1859.320, 1859.321, 1859.322, 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.326, 1859.328, 1859.329

Title 3

11/21/07 AMEND: 3433(b)
11/16/07 AMEND: 3417(b)
11/15/07 AMEND: 3434
11/14/07 AMEND: 3589
11/14/07 AMEND: 3591.20
11/09/07 AMEND: 3434(b)
11/06/07 AMEND: 3406(b)
11/01/07 AMEND: 1380.19, 1437.12
10/29/07 AMEND: 3433(b)
10/29/07 AMEND: 3406(b)
10/25/07 AMEND: 3591.20 (a & b)
10/15/07 AMEND: 3406(b)
10/03/07 AMEND: 3433(b)
09/28/07 AMEND: 3434(b)
09/25/07 AMEND : 3591.2(a)
09/24/07 ADOPT : 3591.20
09/19/07 AMEND: 3700(c)
09/17/07 AMEND: 3406(b)
09/12/07 AMEND: 3700(c)
09/11/07 AMEND: 3591.5(a)
09/11/07 AMEND: 3433(b)
09/10/07 ADOPT: 1391, 1391.1
09/05/07 ADOPT: 820.2, 820.7 AMEND: 820, 820.3, 820.4, 820.5, 820.6, 820.7 REPEAL: 820.6
08/21/07 AMEND: 3434
08/10/07 ADOPT: 3152
07/24/07 AMEND: 3591.6(a)(1)
07/23/07 AMEND: 3589(a)
07/20/07 AMEND: 3591.6(a)(1)
07/20/07 AMEND: 3423(b)
07/18/07 AMEND: 3434(b)
07/13/07 AMEND: 3591.20(a)
07/09/07 AMEND: 3433(b)
07/06/07 AMEND: 3591.2(a)
07/06/07 AMEND: 3589(a)
06/21/07 AMEND: 3434(b), 3434(c)

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11/21/07 ADOPT: 12347
11/09/07 AMEND: 1371
10/25/07 ADOPT: 1747, 1748
10/24/07 AMEND: 1486
09/20/07 AMEND : 1844
09/04/07 AMEND: 12205.1, 12225.1

Title 5

11/19/07 ADOPT: 11981.3, 11984.5, 11984.6, 11985, 11985.5, 11985.6 AMEND: 11981 (renumber to 11980), 11982 (renumber to 11981), 11985 (renumber 11981.5), 11980 (renumber to 11982), 11986 (renumber to 11982.5), 11983, 11983.5, 11984
11/05/07 ADOPT: 18134

10/29/07 ADOPT: 24010, 24011, 24012, 24013
10/24/07 ADOPT: 11996, 11996.1, 11996.2, 11996.3, 11996.4, 11996.5, 11996.6, 11996.7, 11996.8, 11996.9, 11996.10, 11996.11
10/02/07 AMEND: 80001
10/01/07 AMEND: 43726
09/24/07 ADOPT: 17604.1, 17605.1, 17624, 17630.1, 17638, 17639, 17643, 17644, 17650 AMEND : 17600, 17601, 17602, 17603, 17604, 17605, 17606, 17607, 17608, 17609, 17625, 17626, 17627, 17628, 17629, 17630.2, 17631, 17632, 17640, 17641, 17642, 17646, 17648 REPEAL: 17633, 17634, 17645, 17647, 17649
09/10/07 ADOPT: 19828.2, 19829.5, 19830.1, 19837.1, 19838, 19846 AMEND: 19816, 19816.1, 19828.1, 19830, 19837, 19854
08/27/07 ADOPT: 9517.2
08/23/07 AMEND: 42000, 42002, 42003, 42005, 42006, 42007, 42008, 42009, 42010, 42011, 42012, 42013, 42018, 42019
08/16/07 ADOPT: 18096 AMEND: 18078, 18081, 18084, 18085, 18089, 18090, 18100, 18107
08/13/07 ADOPT: 17660, 17661, 17662, 17663, 17664, 17665, 17666, 17667
08/09/07 AMEND: 80124, 80125
07/31/07 ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7
07/27/07 AMEND: 50500
07/20/07 ADOPT: 58520
07/17/07 ADOPT: 52000, 52010, 55003, 55007, 55020, 55021, 55022, 55023, 55024, 55025, 55030, 55031, 55032, 55033, 55034, 55035, 55040, 55041, 55042, 55043, 55044, 55050, 55051, 55052, 55060, 55061, 55062, 55063, 55064, 55070, 55072, 55080, 55100, 55130, 55150, 55151, 55151.5, 55151.7, 55160, 55170, 55182, 55183, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55230, 55231, 55232, 55233, 55234, 55235, 55236, 55240, 55241, 55242, 55243, 55245, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55400, 55401, 55402, 55403, 55404, 55405, 55450, 55451, 55603, 55607, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758,5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 55840, 55841, 58161, 58161.5 AMEND: 55000, 55000.5, 55002, 55002.5, 55005, 55006, 55250, 55250.2, 55250.3, 55250.4, 55250.6, 55250.7, 55252, 55253, 55256, 55257, 55500, 55502, 55510, 55514, 55518, 55521, 55523, 55530, 55600, 55601, 55602.5, 55605, 55630, 55700, 55701, 55702, 55720, 55732, 56029, 58003.1, 58007, 58009, 58051 REPEAL: 55004, 55100, 55130, 55150, 55151, 55151.5, 55151.7, 55160, 55170, 55182, 55183, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55230, 55231, 55232, 55233, 55234, 55235, 55236, 55240, 55241, 55242, 55243, 55245, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55400, 55401, 55402, 55403, 55404, 55405, 55450, 55451, 55603, 55607, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 55840, 55841, 58161
07/17/07 AMEND: 58704, 58770, 587714, 58774, 58776, 58777 REPEAL: 58785

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11/05/07 AMEND: 4324
10/31/07 AMEND: 1704
10/30/07 AMEND: 1532.2, 5203, 5206, 8359
10/23/07 ADOPT: 3324
10/10/07 ADOPT: 5349, 5350, 5351, 5352, 5353, 5354, 5355.1 AMEND: 5355, 5356, 5357, 5358
10/10/07 AMEND: 4884
10/09/07 AMEND: 2320.2
10/03/07 ADOPT: 3458.1
08/22/07 AMEND: 14300.10, 14300.12, 14300.29, 14300.46
08/21/07 AMEND: 1740
07/23/07 ADOPT: 32993 AMEND: 32990, 32992, 32994, 32995, 32996, 32997 REPEAL: 32991, 32993

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08/27/07 AMEND: 7128

08/23/07 ADOPT: 3100, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3410, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 REPEAL: 3100, 3200.000, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3310, 3400, 3405, 3410, 3415

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11/15/07 AMEND: 2498.6
11/07/07 AMEND: 1409, 1422, 1423
11/02/07 AMEND: 2498.6
10/31/07 AMEND: 2318.6, 2353.1
10/10/07 AMEND: 2498.6
10/10/07 AMEND: 2218.63(b)
10/09/07 AMEND: 5.2001
09/19/07 ADOPT: 2538.1, 2538.2, 2538.3, 2538.4, 2538.5, 2538.6, 2538.7, 2538.8
09/17/07 AMEND: 2498.6
08/29/07 ADOPT: 2842 AMEND: 2848
08/29/07 ADOPT: 3007.05, 3007.2 AMEND: 2805, 2809.3, 2840, 2849.01, 3005, 3006, 3007.3, 3011.4 REPEAL: 2840.1
08/20/07 ADOPT: 2105.1, 2105.2, 2105.3, 2105.4, 2105.5, 2105.6, 2105.7, 2105.8, 2105.9, 2105.10, 2105.11, 2105.12, 2105.13, 2105.14, 2105.15, 2105.16, 2105.17, 2105.18, 2105.19
08/13/07 ADOPT: 5357, 5357.1, 5357.2, 5358, 5358.1 AMEND: 5350, 5352
07/31/07 AMEND: 2699.205, 2699.6600, 2699.6607, 2699.6608, 2699.6613, 2699.6629, 2699.6813
07/26/07 ADOPT: 2355.1, 2355.2, 2355.3, 2355.4, 2355.5, 2355.6, 2355.7, 2355.8, 2356.1, 2356.2, 2356.3, 2356.4, 2356.5, 2356.6, 2356.7, 2356.8, 2356.9, 2357.1, 2357.2, 2357.3, 2357.4, 2357.5, 2357.6, 2357.7, 2357.8, 2357.9, 2357.10, 2357.11, 2357.12, 2357.13, 2357.14, 2357.15, 2357.16, 2357.17, 2357.18, 2357.19, 2358.1, 2358.2, 2358.3, 2358.4, 2358.5, 2358.6, 2358.7, 2358.8, 2358.9, 2359.1, 2359.2, 2359.3, 2359.4, 2359.5, 2359.6, 2359.7 REPEAL: 2555, 2555.1, 2556, 2556.1, 2556.2
07/09/07 AMEND: 260.140.8, 260.140.41, 260.140.42, 260.140.45, 260.140.46
06/28/07 AMEND: 2498.4.9
06/28/07 AMEND: 2498.4.9
06/28/07 AMEND: 2498.6
06/28/07 AMEND: 2498.5
06/28/07 AMEND: 2498.4.9
06/28/07 AMEND: 2498.6
06/28/07 AMEND: 2498.6
06/28/07 AMEND: 2498.6
06/28/07 AMEND: 2498.6
06/28/07 AMEND: 2498.4.9
06/28/07 AMEND: 2498.5

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10/15/07 AMEND: 1053, 1054, 1055, 1058, 1070
09/28/07 AMEND: 51.19
08/08/07 AMEND: 1005, 1007, 1008
08/01/07 AMEND: 1070, 1081, 1082
08/01/07 AMEND: 1070, 1081, 1082
07/31/07 ADOPT: 999.100, 999.101, 999.102, 999.108, 999.114, 999.115, 999.121, 999.122, 999.128, 999.129, 999.130, 999.131, 999.132, 999.133, 999.134, 999.135, 999.136, 999.137, 999.138, 999.139, 999.140, 999.141, 999.142, 999.143, 999.144, 999.145, 999.146, 999.147, 999.148, 999.149, 999.150, 999.151, 999.152, 999.153, 999.154, 999.165, 999.166, 999.167, 999.168, 999.169, 999.170, 999.171, 999.172, 999.173, 999.174, 999.175, 999.176, 999.177, 999.178, 999.179, 999.190, 999.191, 999.192, 999.193, 999.194, 999.195, 999.196, 999.197, 999.203, 999.204, 999.205, 999.206, 999.207, 999.208, 999.209, 999.210, 999.211, 999.217, 999.218, 999.219, 999.220, 999.221, 999.222, 999.223

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11/09/07 AMEND: 1968.2, 1968.5, 2035, 2037, 2038

11/08/07 AMEND: 423.00
10/23/07 AMEND: 156.00
10/22/07 AMEND: 1090
10/17/07 AMEND: 811, 813
10/16/07 AMEND: 425.01
10/15/07 AMEND: 2023.1, 2023.3, 2023.4
10/12/07 AMEND: 1201, 1212, 1212.5, 1213, 1234
09/18/07 AMEND: 125.02, 125.04, 125.08, 125.12, 125.16, 125.20
09/11/07 AMEND: 1956.1, 1956.8
08/22/07 ADOPT: 1300, 1400, 1401, 1402, 1403, 1404, 1405 REPEAL: 1300, 1301, 1302, 1303, 1304, 1304.1, 1305, 1310, 1311, 1312, 1313, 1314, 1315, 1320, 1321, 1322, 1323, 1324, 1325, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1339.1, 1339.2, 1339.3, 1339.4, 1339.5, 1339.6, 1340, 1341, 1342, 1343, 1344, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1370, 1371, 1372, 1373, 1374, 1375, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1420, 1421, 1422, 1423, 1424, 1425, and Article 15 text
08/21/07 AMEND: 932, 934.1
08/07/07 AMEND: 794
07/25/07 AMEND: 156.00
07/16/07 AMEND: 2111, 2112, 2411, 2412, 2413, 2415
07/13/07 AMEND: 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610 REPEAL: 2611
07/13/07 AMEND: 330.08
07/11/07 ADOPT: 150.08
07/09/07 AMEND: 225.18, 225.39, 225.45, 225.54 and 225.63
06/29/07 AMEND: 181.00

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09/12/07 ADOPT: 93116.3.1 of title 17 AMEND: 2451, 2452, 2453, 2455, 2456, 2458, 2459, 2460, 2461, and 2462 of title 13, 93116.1, 93116.2, and 93116.3 of title 17

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11/13/07 AMEND: 1038(i)
11/07/07 AMEND: 550, 551, 552
11/05/07 AMEND: 825.05
10/25/07 AMEND: 502
10/24/07 AMEND: 895.1, 898, 914.8, 916, 916.2, 916.9, 916.11, 916.12, 923.3, 923.9, 934.8, 936, 936.2, 936.9, 936.11, 936.12, 943.3, 943.9, 954.8, 956, 956.2, 956.9, 956.11, 956.12, 963.3, 963.9
10/16/07 ADOPT: 1.46, 28.38, 28.41, 28.42 AMEND: 1.17, 1.59, 27.60, 27.90, 28.59, 159, 195
10/12/07 AMEND: 815.05
10/09/07 AMEND: 29.85
09/19/07 AMEND: 502, 509
08/29/07 AMEND: 251.7, 257, 300, 600
08/22/07 AMEND: 165, 245—App. A, 632
07/30/07 ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5
07/27/07 ADOPT: 15155, 15190.5, 15191, 15192, 15193, 15194, 15195, 15196, AMEND: 15053, 15061, 15062, 15072, 15073, 15074, 15082, 15087, 15105, 15179, 15180, 15186 REPEAL: 15083.5
07/19/07 AMEND: 4970.50
07/17/07 AMEND: 2305, 2310, 2320
07/10/07 AMEND: 4970.50, 4970.53, 4970.55, 4970.62, 4970.63, 4970.64
06/21/07 ADOPT: 2850 AMEND: 2090, 2425, 2530 REPEAL: 2850
06/21/07 AMEND: 7.50(b)(91.1)

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10/17/07 Title 14: 18050, 18051, 18060, 18070, 18072, 18075, 18077, 18078, 18081, 18104.4, 18105.4, 18105.6, 18209, 18304, 18304.2, 18306, 18307, 18831 Title 27: 21563, 21615, 21620, 21650, 21680

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10/22/07 REPEAL: 3999.1.8, 3999.1.9, 3999.1.10, 3999.1.11
10/18/07 ADOPT: 3486 AMEND: 3482, 3484, 3485
10/16/07 AMEND: 3000, 3045.2, 3170.1, 3176, 3177, 3815
10/09/07 ADOPT: 2536.1
10/01/07 ADOPT: 3075.4 AMEND: 3000
09/05/07 AMEND: 3000, 3315, 3323, 3341.5
08/13/07 AMEND: 3190, 3191
06/26/07 ADOPT: 4034.0, 4034.1, 4034.2, 4034.3, 4034.4, 4036 REPEAL: 4040

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11/21/07 AMEND: 998
11/19/07 AMEND: 1749
11/07/07 AMEND: 1523

11/02/07 ADOPT: 4440, 4442, 4444, 4446, 4448, 4450, 4452, 4470, 4472, 4474, 4476, 4478, 4480, 4482, 4484

10/31/07 AMEND: 1707.2

10/05/07 AMEND: 306, 306.1, 310, 390, 390.2, 390.3, 390.4, 390.5

10/04/07 AMEND: 1399.678

10/01/07 AMEND: 3394.6

09/20/07 AMEND: 2649

09/17/07 ADOPT: 973, 973.1, 973.2, 973.3, 973.4, 973.5, 973.6

09/11/07 AMEND: 950.10

09/11/07 ADOPT: 2520.4, 2520.5, 2577.5, 2577.6 AMEND: 2518.6, 2523, 2523.2, 2523.5, 2523.6, 2576.6, 2579.2, 2579.4, 2579.7, 2579.8 REPEAL: 2523.1, 2579.3

08/28/07 ADOPT: 1351.1

08/28/07 ADOPT: 1315.03, 1326 AMEND: 1325.4

08/03/07 AMEND: 1399.541

08/03/07 AMEND: 2036, 2036.5

08/01/07 AMEND: 3340.16, 3340.42, 3392.2

07/16/07 AMEND: 2670

07/12/07 AMEND: 160

07/11/07 AMEND: 68.3, 68.4, 88, 88.1, 88.2, 89, 99

07/10/07 AMEND: 4114

07/03/07 ADOPT: 4152.1

06/22/07 AMEND: 1399.170.11

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11/16/07 AMEND: 57310, 57332

11/08/07 AMEND: 94508, 94509, 94510, 94511, 94512, 94513, 94514, 94515, 94523

10/29/07 AMEND: 93119

09/24/07 ADOPT: 93102.1, 93102.2, 93102.3, 93102.4, 93102.5, 93102.6, 93102.7, 93102.8, 93102.9, 93102.10, 93102.11, 93102.12, 93102.13, 93102.14, 93102.15, and 93102.16 AMEND: 93102

09/18/07 ADOPT: 93115.1, 93115.2, 93115.3, 93115.4, 93115.5, 93115.6, 93115.7, 93115.8, 93115.9, 93115.10, 93115.11, 93115.12, 93115.13, 93115.14, 93115.15 AMEND: 93115

08/28/07 ADOPT: 2641.56, 2641.57 AMEND: 2641.30, 2641.45, 2641.55, 2643.5, 2643.10, 2643.15 REPEAL: 2641.75, 2641.77

08/27/07 AMEND: 93300.5

08/08/07 ADOPT: 94201.1 AMEND: 94201, 94202, 94203, 94204, 94207, 94208, 94209, 94210, 94211, 94212

07/30/07 AMEND: 2500, 2502, 2505

07/24/07 ADOPT: 100085

07/11/07 AMEND: 30315.33, 30316.60, 30317, 30319.20

06/27/07 AMEND: 54342

06/26/07 AMEND: 60201, 60202, 60205, 60210

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11/21/07 AMEND: 4703

11/08/07 ADOPT: 474

07/30/07 AMEND: 1591.2

07/30/07 AMEND: 1591

07/30/07 AMEND: 1591.4

07/26/07 AMEND: 1586

07/16/07 AMEND: 1603

07/10/07 AMEND: 1660

07/02/07 AMEND: 17952

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10/31/07 AMEND: 2040

10/01/07 AMEND: 2600

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10/16/07 ADOPT: 2900, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913

08/22/07 AMEND: 1602, 1604, 1606, 1607

07/03/07 ADOPT: 1233.5, 1234, 1236.5, 1311, 1346, 1349, 2508 AMEND: 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1341, 1342, 1343, 1344, 1345, 1347, 1348, 1350, 1351, 2501, 2502, 2503, 2504, 2505, 2506, 2507 REPEAL: 1340

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11/20/07 AMEND: 311–1

11/08/07 ADOPT: 72038, 72077.1, 72329.1 AMEND: 72077, 72329

11/07/07 ADOPT: 66269.1

11/06/07 AMEND: 51003(e) REPEAL: 51307, 51506.2

10/23/07 AMEND: 4400, 4409.1, 4415 REPEAL: 4440.1

10/18/07 AMEND: 67391.1

10/16/07 AMEND: 10100 REPEAL: 10101

10/03/07 AMEND: 67386.5, 67386.6, 67386.11

09/18/07 ADOPT: 64432.3, 64432.8 AMEND: 64413.1, 64431, 64432, 64447.2, 64463.1, 64465, 64481 REPEAL: 64450

09/06/07 ADOPT: 66270.69.2 AMEND: 66270.67 (renumber to 66270.69.5), 66270.69 (renumber to 66270.69.1), 67800.1 (renumber to 66270.69.3), 67800.5 (renumber to 66270.69.4)

09/05/07 AMEND: 4427
08/31/07 AMEND: 12805
08/08/07 ADOPT: 96040, 96041, 96042, 96043, 96044, 96045, 96046, 96050 AMEND: 96000
07/18/07 AMEND: 4401.5 REPEAL: 4401, 4402, 4432, 4441
07/18/07 ADOPT: 69109 AMEND: 69100, 69101, 69102, 69103, 69104, 69105, 69106, 69107, 69108
07/16/07 ADOPT: 50966 AMEND: 50961, 50962

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08/07/07 ADOPT: 86500, 86501, 86505, 86505.1, 86506, 86507, 86508, 86509, 86510, 86511, 86512, 86517, 86518, 86519, 86519.1, 86519.2, 86520, 86521, 86522, 86523, 86524, 86526, 86527, 86528, 86529, 86531, 86531.1, 86531.2, 86534, 86535, 86536, 86540, 86542, 86544, 86545, 86546, 86552, 86553, 86554, 86555, 86555.1, 86558, 86559, 86561, 86562, 86563, 86564, 86565, 86565.2, 86565.5, 86566, 86568.1, 86568.2, 86568.4, 86570, 86572, 86572.1, 86572.2, 86574, 86575, 86576, 86577, 86578, 86578.1, 86579, 86580, 86586, 86587, 86587.1, 86587.2, 86588 AMEND: 11–400c, 11–402, 45–101(c), 45–202.5, 45–203.4, 45–301.1

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11/07/07 ADOPT: 3915
09/04/07 AMEND: 2053
08/27/07 AMEND: 2200, 2200.2, 2200.3, 2200.4, 2200.6 REPEAL: 2201
08/21/07 ADOPT: 3979.2
08/20/07 ADOPT: 3979.3
08/16/07 ADOPT: 3939.26
08/15/07 AMEND: 3939.10
08/14/07 ADOPT: 3939.25
08/09/07 ADOPT: 3949.4
08/02/07 ADOPT: 3967
06/27/07 ADOPT: 3002

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07/06/07 AMEND: 5060, 5061, 5062, 5064, 5520, 5521, 5530, 5540.1, 5575

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08/21/07 ADOPT: 20939 AMEND: 20918, 20919, 20920, 29021, 20923, 20925, 20931, 20932, 20933, 20934, 20937 REPEAL: 20919.5

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07/30/07 AMEND: 47–201, 47–401
06/26/07 AMEND: 40–118, 43–103, 44–209, 80–301, 82–808
06/25/07 AMEND: 47–110 and 47–301